

OPEN MEETING MINUTES
Missouri State Board of Embalmers
and Funeral Directors

August 11, 2009
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

Tuesday, August 11, 2009 – 7:30 a.m. to 7:31 a.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors was called to order by Martin Vernon, Chairman, at 7:30 a.m. on Tuesday, August 11, 2009, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

Roll Call

Board Members Present

Martin Vernon, Chairman
Gary Fraker, Vice-Chairman
James Reinhard, Member

Board Members Absent

Todd Mahn, Secretary
John McCulloch, Member
Joy Gerstein, Public Member

Staff Present

Becky Dunn, Executive Director
Lori Hayes, Inspector
Sharon Euler, Assistant Attorney General
Don Eggen, Chief Investigator

Closed Meeting

Motion was made by Gary Fraker and seconded by Jim Reinhard to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and Section 324.001.8 RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney; Section 610.021 Subsection (1) RSMo and 324.001.9 RSMo for deliberation on discipline; Section 610.021 Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency; Section 610.021 Subsection (13) RSMo for making performance ratings pertaining to individual

employees; Section 610.021 Subsection (7) RSMo for reviewing testing and examination materials; Section 610.021 Subsection (14) and Section 324.001.8 RSMo for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees; and Subsection of 610.021 RSMo for the purpose of reviewing and approving the closed minutes of previous meetings. Motion carried with Martin Vernon, Gary Fraker and Jim Reinhard voting in favor with no votes in opposition. John McCulloch was absent for this portion of meeting. Todd Mahn and Joy Gerstein were absent from the meeting in its entirety.

Tuesday, August 11, 2009 - 9:00 a.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors reconvened in open session at approximately 9:09 a.m. on Tuesday, August 11, 2009. The meeting was called to order by Martin Vernon, Chairman, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

Roll Call

Board Members Present

Martin Vernon, Chairman
Gary Fraker, Vice-Chairman
John McCulloch, Member
James Reinhard, Member

Board Members Absent

Todd Mahn, Secretary
Joy Gerstein, Public Member

Staff Present

Becky Dunn, Executive Director
Lori Hayes, Inspector
Earl Kraus, Senior Legal Counsel
Sharon Euler, Assistant Attorney General
Connie Clarkston, Director of Budget and Legislation
Don Eggen, Chief Investigator
Mark Stahlhuth, Division of Finance, joined at 1:00p.m.

Public Present

Stephen Zell, ACM
Dale Westby, ACM
Matt Whaley, SCI
John Moore, Moore Funeral Home
Representative Tim Meadows, State Legislature
Darlene Russell, CFL Preneed
Esther Bateman, Stewart Enterprise

Chris Moody, Moody & Associates and SCI
Jim Moody, Moody & Associates and SCI
Mark Warren, English & Monaco
Bill Stalter, Stalter Legal Services
Don Otto, MFDEA
Brad Speaks, Speaks Funeral Home
Ann Warren, English & Monaco

Approval of Agenda

Motion was made by Gary Fraker and seconded by John McCulloch to approve the open agenda. Motion carried with Martin Vernon, Gary Fraker, John McCulloch, and Jim Reinhard voting in favor with no votes in opposition. Todd Mahn and Joy Gerstein were absent from the meeting in its entirety.

Approval of Minutes

No minutes were available for review.

Executive Director's Report

Becky Dunn had nothing to report at this meeting

Future Meeting Dates

Future meeting dates are scheduled as follows:

- August 19, 2009, 9:00 a.m.
- August 25, 2009, 9:00 a.m.
- September 2, 2009, 9:00 a.m.

Financials/Projections

Nothing to report at this meeting.

Brad Speaks/Scott Lindley Appearance (Robert Cowherd by Phone)

Brad Speaks addressed the board pursuant to an email request relating to the claim process and timely payout from National Prearranged Services, Inc (NPS). Mr. Speaks stated he had filed claims from NPS for 35 funerals and hasn't been paid for any of them. He is asking the State Board to make a formal request of the Attorney General to enforce the law. Mr. Speaks further requested that the State Board hire Robert Cowherd as the board's attorney so that he can work on this ongoing issue for the consumers of Missouri and the funeral providers who have been harmed.

Attorney General Update

Sharon Euler, Assistant Attorney General, provided the Board an update regarding National Prearranged Services Inc. (NPS). The Attorney General's website has a Consumer Alert regarding the NPS claim packets. The Special Deputy Receiver has filed a lawsuit to begin asset recovery process in the NPS liquidation action. Ms. Euler also advised that Randy Sutton was indicted on NPS related charges. This was provided for informational purposes only.

Senate Bill 1 Implementation Process

The Board reviewed the public's comments pertaining to Senate Bill 1, and discussion was held. A court reporter was present and recorded the discussion. The transcript is a permanent part of the record and as such a summary of the discussion is not made a part of the official minutes of this meeting.

It was the decision of the Board to draft rules for the following sections for clarity for review at a subsequent meeting:

- 436.405 (2) Definition of Guaranteed Contract
- 436.405 (7) Definition of Preneed Contract
- 436.412 Grandfather Clause - clarify who gets paid what
- 436.415.1 Provider/Seller obligations
- 436.415 Provider/Seller obligations – clarify obligations
- 436.420.3 Provider/Seller contract
- 436.425.1 Consumer contract requirements
- 436.425.1(5) Consumer contract requirements
- 436.425.1(12) Consumer contract requirements
- 436.425.1(13) Consumer contract requirements
- 436.425.1(14) Consumer contract requirements
- 436.425.1(15) Consumer contract requirements
- 436.425.3 Consumer contract requirements
- 436.425.4 Consumer contract requirements
- 436.435.6 Trustee duties

12:00 p.m. – 1:05 p.m. – Closed Meeting

Motion was made by Gary Fraker and seconded by Jim Reinhard to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and Section 324.001.8 RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney; Section 610.021 Subsection (1) RSMo and 324.001.9 RSMo for deliberation on discipline; Section 610.021 Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency; Section 610.021 Subsection (13) RSMo for making performance ratings pertaining to individual employees; Section 610.021 Subsection (7) RSMo for reviewing testing and examination materials; Section 610.021 Subsection (14) and Section 324.001.8 RSMo for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees; and Subsection of 610.021 RSMo for the purpose of reviewing and approving the closed minutes of previous meetings.

Motion carried with Martin Vernon, Gary Fraker, John McCulloch and Jim Reinhard voting in favor with no votes in opposition. Todd Mahn and Joy Gerstein were absent from the meeting in its entirety.

Reconvene

The State Board of Embalmers and Funeral Directors reconvened in open session at approximately 1:05 p.m.

Senate Bill 1 Implementation Process - Continued

The Board continued its review of the public's comments pertaining to Senate Bill 1, and discussion was held. A court reporter was present and recorded the discussion. The transcript is a permanent part of the record and as such a summary of the discussion is not made a part of the official minutes of this meeting.

Open Discussion – Dialogue with General Public Attending Open Session Continuation and/or Completion of any Unfinished Open Session Business
Nothing further to report.

Adjournment

A motion was made by Jim Reinhard and seconded by Gary Fraker to adjourn. Motion carried with Gary Fraker, John McCulloch and James Reinhard voting in favor with no votes in opposition. The meeting adjourned at 4:32 p.m. on Tuesday, August 11, 2009. Todd Mahn and Joy Gerstein were absent from the meeting in its entirety.

Executive Director: Sandy Sebastian

Approved by the Board on: 6/14-16/10

MISSOURI STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

TRANSCRIPTION OF MEETING

DIVISION OF PROFESSIONAL REGISTRATION
3605 MISSOURI BOULEVARD
JEFFERSON CITY, MISSOURI

AUGUST 11, 2009
9:05 A.M. - 4:40 P.M.

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STATE BOARD OFFICE

1 CHAIRMAN: Call the meeting and good
2 time together to order this morning, so we'll
3 take a roll call. Gary Fraker?

4 MR. FRAKER: Yes, sir.

5 CHAIRMAN: John McCulloch?

6 MR. McCULLOCH: Here.

7 CHAIRMAN: Jim Reinhard?

8 MR. REINHARD: Here.

9 CHAIRMAN: Joy Gerstein.

10 MS. DUNN: Absent.

11 CHAIRMAN: Todd Mann?

12 MS. DUNN: Absent.

13 CHAIRMAN: All right. So, go around
14 the room and make introductions. Well, we'll
15 do the approval of the agenda first. Need a
16 motion for approval of the agenda.

17 MR. FRAKER: So moved.

18 CHAIRMAN: So moved, Mr. Fraker.

19 MR. McCULLOCH: Second.

20 CHAIRMAN: John seconds. So, that
21 takes care of that. So, now, we'll go around
22 the room and introduce. I'm Martin Vernon,
23 Chairman of the Board. To my right around the
24 table we have Earl Kraus, senior legal counsel
25 for the Division. You heard Gary Fraker say

1 here, Board member. Lori Hayes, our
2 inspector; our court reporter. Tell us your
3 name.

4 THE REPORTER: Kristy Bradshaw.

5 CHAIRMAN: Kristy Bradshaw. Glad to
6 see you today. Connie Clarkston, if I get it
7 right. I never can remember your exact title.
8 Say what that is, please.

9 MS. CLARKSTON: Director of budget and
10 legislation.

11 CHAIRMAN: Director of budget and
12 legislation. Of course, John McCulloch, Jim
13 Reinhard, Board members; Sharon Euler,
14 assistant attorney general, and who really
15 runs the ship; our executive director who we
16 cannot get along without, the best, Becky
17 Dunn. So --

18 MS. DUNN: Thank you. And Don.

19 CHAIRMAN: Oh, yes. Don just walked
20 in -- our central investigative unit, Don
21 Eggen here with us today. So -- and then
22 we'll go around the room and introduce, but
23 I'll introduce. We have Representative Tim
24 Meadows with us here today. We're always glad
25 to have him with us. And then Darlene, just

1 take it away, and right on around.

2 MS. RUSSELL: Darlene Russell, CFL
3 Preneed; Esther Bateman, Stuart Enterprises;
4 Brad Speaks, Speaks Funeral Home; Jim Moody,
5 Moody & Associates and SCI; Chris Moody, Moody
6 & Associates and SCI; John Moore, Moore
7 Funeral Home; Matt Whaley, SCI Funeral
8 Services of Missouri; Dale Westby, Associated
9 Cemeteries -- (inaudible) -- St. Charles
10 Memorial Gardens; Bill Stalter, Stalter Legal;
11 Stephen Zell -- (inaudible) -- Cemetery and
12 Chapel; Don Otto, Missouri Funeral Directors
13 and Embalmers Association, Missouri Funeral
14 Trust.

15 CHAIRMAN: All right. We're very glad
16 to have all of you with us today, so -- just
17 as a footnote, I would just say that we've
18 been -- or I personally have been very proud
19 of how these meetings have went. We knew it
20 would be like pulling teeth and going to the
21 dentist for a long grinding, grueling ordeal
22 through each one of these sessions, and if you
23 haven't been to one yet, you'll agree with
24 that whenever the end of the day is here, but,
25 yet, very informative and very good, in my

1 opinion. So, a couple of ground rules for the
2 day for some of us that haven't been here.
3 When we start the line-by-line, so to speak,
4 process, the legal counsel will kind of guide
5 that discussion. They've put a lot of effort
6 and footnotes and notes that you all have sent
7 to us, and has been very good for helping with
8 that. We need to stay focused microscopically
9 so we're not chasing rabbits all over the
10 place, and then we'll move it through section
11 by section, and that helps greatly. So, we
12 will also be breaking at noon for lunch with
13 an hour out and then back at 1:00, so
14 everybody is aware of that and can be thinking
15 in turn of that. So, I'm going to give it to
16 Becky for just a second because she has some
17 thoughts on how we have to address things with
18 the court reporter and all that.

19 MS. DUNN: So, for those new to the
20 group today, please only speak one at a time
21 and when you do speak, say your name and
22 organization for the court reporter so we can
23 have those reflected accurately. If you do
24 want copies of the minutes, please make sure
25 to contact the court reporter, give your name

1 and organization. They're working weekly.
2 They don't have them done yet, but if you do,
3 you'll have to get those from the court
4 reporter.

5 CHAIRMAN: Okay. So, did you say we
6 want the future dates just to be posted?

7 MS. DUNN: All of our future dates are
8 on our Web site at this time. What we're
9 trying to do is those that -- I think everyone
10 is on our e-mail group. We put everyone's
11 comments under that week's meetings. If you
12 could just refer to our Web site, it's very
13 helpful to us, and we try to keep that as
14 updated as we can by the minute.

15 CHAIRMAN: Any comments that you
16 choose to express, we may hear it vocally
17 today, but if you really want the legal
18 counsel to look at that, add it to the next
19 week's -- what we'll be referring to as bubble
20 notes as we go along through here in the
21 second section where maybe we back up and look
22 at something, there is a process for that and
23 you know it better than I, so comments would
24 be e-mailed to Becky by --

25 MS. DUNN: Well, we'd like to have

1 them, you know, the Friday before the meeting
2 if at all possible. I know that that's very
3 difficult. We're not getting our comments
4 back to you in that time frame, but as soon
5 as you can e-mail them to myself or prembalm
6 -- I think that's our generic e-mail which is
7 on our Web site -- we'll get those posted.

8 CHAIRMAN: Okay. So, on the agenda
9 for the day, there was a #3 there. It says
10 financial/projections. That part is that we
11 weren't sure if there was really going to be a
12 presentation of that. We thought there was,
13 but that's coming at a later moment, so that's
14 been postponed. So, the next thing on the
15 agenda, we had listed Brad Speaks/Scott
16 Lindley/appearance, whatever; is there
17 anything in that thought at the moment?

18 MR. SPEAKS: Well, I've prepared an
19 interpretive dance.

20 CHAIRMAN: Okay. Do you want on the
21 table? We'll back up. We'll back up, move
22 the microphone.

23 MR. SPEAKS: I guess this mike can
24 pick me up okay? Brad Speaks, Speaks Funeral
25 Home. I had submitted a formal request to the

1 Board and I suspect everybody has copies of
2 that. Very briefly, I'll just explain a
3 little bit. There's two issues here, really.
4 They are not mutually exclusive in the sense
5 that they're related, but you could do one or
6 the other or neither or both. The first has
7 to do with the special master in Texas.
8 There's seven issues here that I've listed.
9 Does everybody have copies of this letter?

10 MS. DUNN: We have some at the end of
11 the table. Connie, would you --

12 MS. CLARKSTON: Actually, they're over
13 there, and his aren't in there, are they?

14 MS. DUNN: Oh.

15 UNIDENTIFIED: Uh-huh. Yeah. They
16 should be.

17 MS. CLARKSTON: Okay. Never mind.
18 I'm good.

19 MR. SPEAKS: Well, I guess, for the
20 group's information that is not aware, I am
21 one of the harmed parties; in other words, our
22 funeral home is a victim of the NPS events,
23 and have been receiving face amount on some of
24 our contracts, have received nothing on other
25 contracts, and, to date, I have probably

1 provided approximately 35 funerals where I
2 have not been paid a dime. And our position
3 is that represents felony violations of
4 Chapter 436. We have requested the attorney
5 general to do something about that and were
6 politely informed that that probably did not
7 fall within their strategy. And so, we are
8 asking the State Board to make a formal
9 request of our attorney general to enforce
10 those laws. In addition, here is the seven
11 points: Payment of claims from NPS, ongoing
12 issues, and I know Don appeared in court in
13 Texas, arguing these same points, the timing
14 of the claims payments. They're supposed to
15 be doing this, you know, within a certain time
16 period, and their position is, well, the
17 average is that time period. Don made the
18 point, well, that means half of them are not
19 in compliance. We would like to have
20 something done about that. We're concerned
21 about ongoing consumer payments on the
22 contracts in the event that consumers are
23 still paying under threat of, well, you'll
24 lose your funeral if you don't. To date,
25 there is no guarantee of what's happening to

1 that money. There's also questions about what
2 happened to the money that was sent in prior
3 to the settlement agreement and, Don, I
4 understood that they gave you an answer, it's
5 just an unacceptable answer.

6 MR. OTTO: Yeah. Well, there's two
7 issues there. One is back in May, they said
8 they would have an official report on that
9 within a month. That was in May. And I said
10 in Texas everything is bigger in Texas,
11 apparently, including the months, because we
12 don't have that yet. Chris Fuller, however,
13 on a phone conference with Donna Garrett and
14 Kaylene Summerville, our president, said the
15 following: And there's three time periods.
16 There's the time period after they went under
17 court supervisor, but before the receivership
18 was appointed officially. Then there was a
19 time while it was under receivership
20 reorganization, not yet liquidation, and then
21 there was a time after liquidation. This is
22 what he told us on the phone. All money that
23 was sent in before the receiver was appointed
24 is gone. Kiss it good-bye; okay? You know,
25 and that includes there was a number of

1 contracts. Now, they -- NPS was under court
2 orders to stop doing business, and a number of
3 states had ordered it to stop doing business,
4 but, yet, some still go through. There were
5 some -- I call them the March contracts,
6 although that's slightly inaccurate. But the
7 March contracts, they accepted money,
8 including some that were paid in full. That
9 money is gone. Then the time period -- now,
10 then, so, that one's clear. The time period
11 after the liquidation order was signed, what
12 Mr. Fuller said was that although the
13 installment payments that are coming in are
14 not being physically segregated, which is, I
15 believe, is contrary to what they had
16 indicated earlier, but I'd have to go back and
17 actually read the transcripts. It is being
18 accounted for and that in the event that those
19 contracts are determined to be orphaned and
20 that -- that money will be returned to them.
21 Then you've got the trickiest time period
22 between the date the receivership was
23 appointed, but before the liquidation order
24 was in effect when people were saying that --
25 Donna Garrett and others were saying continue

1 to send your money in or you'll lose your
2 contracts, and people were sending the money
3 in. Now, I will not try -- I will -- until
4 something is filed, I will not say that this
5 is the final word, and I will not say this is
6 official. This was in a phone conversation.
7 But what we were told is that those consumers
8 will not get those installment payments back
9 if it's determined that they don't have a
10 contract -- (inaudible) -- orphaned. They
11 will get the money back after October 28th
12 when the liquidation order went into effect.
13 So, if anybody is sending money in now on an
14 installment contract, that money is "safe,"
15 because you're not going to lose it. But for
16 that money that was sent in between, what was
17 it, April 9th, I think it was, and October
18 28th, it looks like that that money will not,
19 under any circumstances, be refunded. Now,
20 that does not say that they aren't working on
21 a way to try to reduce the number of contracts
22 that are orphaned. I think they are. I
23 think they are trying to work -- figure out a
24 way so that more and more of those are not
25 orphaned so that it doesn't matter, they can

1 continue to make payments and they'll get the
2 Guaranty fund payment. But what he said was
3 if it's an orphan contract so that there is no
4 Guaranty fund payment, the money between April
5 9th and the liquidation order would not be
6 returned to them, and I expressed my extreme
7 unhappiness with that, and he said he
8 understood. He didn't disagree with my
9 emotions on that, but he said that was their
10 view, under Texas law, as to how it had to
11 be. And I pointed out, well, you're the ones
12 saying send the money in. And he goes, well,
13 that's no different than NPS. And I'm going,
14 yeah, but I'm hoping they're all in jail soon,
15 and you're the Texas court. And he said,
16 well, that's -- you know, I understand your
17 point, and when we file this -- of course,
18 they haven't filed this yet. When we file
19 this, you'll have an opportunity to make
20 objections to that, and he urged us to do so
21 when that came out. Now, again, that's --
22 that was in a phone conversation. I can't
23 hold him to it because, obviously, he's not
24 the decision-maker. There's a lot of other
25 chiefs in that, and not as many Indians as you

1 think. A lot of chiefs, not many Indians.
2 And so, that may change and it may not be as
3 big a deal as I'm concerned about because they
4 might be able to figure out a way to make
5 these not court -- potentially orphan
6 contracts not orphan, in which case then,
7 well, that's all right, maybe. I mean, not
8 perfect, but it's better than what it is, but
9 that is what we were told. And to describe
10 my vehement opposition to that result, if, in
11 fact, people had sent money in to Texas under
12 the representation from the special deputy
13 receiver that if you don't send this in,
14 you're going to lose your contract, and then
15 to find out a year later, well, you've lost
16 your contract anyway, even though you've never
17 missed a payment, plus all that money you sent
18 in during the summer, we're keeping, I said is
19 pretty bad.

20 MR. SPEAKS: Yeah. I guess I'm just a
21 stupid funeral director that grew up in a town
22 of 1,500 people, but where I'm from, we would
23 call that stealing, and we're concerned about
24 that, and we would like our attorney general
25 to do something about that. Thank you, Don.

1 Point #4, Missouri banks and their liability
2 class-action lawsuits, you know, since I wrote
3 this, there have been developments in terms of
4 the lawsuits; however, we're still very
5 concerned that the purpose of one of those
6 lawsuits may be to push us out and that's not
7 right. We are the harmed parties. Point #5,
8 our expenses in pursuing this matter, it's
9 kind of like if your baby gets kidnapped and
10 the FBI tells you you need to pay for this
11 yourself, you know. Well, you do what you've
12 got to do because it's your kid, but I don't
13 think that's right. We'd like to have access
14 to the teleconference reports. You know, at
15 one point, we were allowed to do that. As a
16 result of somebody's barking dog, we got
17 kicked off of that call. That was
18 unfortunate. Perhaps there is a way, though,
19 for us to gain access back. And then,
20 finally, the SDR's attempt -- you know, this
21 is kind of past news, as well -- to send this
22 letter out to all consumers. I think we've
23 all been besieged by phone calls and, you
24 know, I would hope that that could have been
25 avoided because it stirs up the public. The

1 number-one call has been is my funeral safe,
2 and there is really no good answer to that.
3 The answer we've given them is, well, we
4 intend to provide your funeral whether we get
5 paid or not. And, you know, that's just where
6 that stands. The second issue has to do with
7 the Board's newfound ability to hire legal
8 counsel, and I think that's great. I'd like
9 to suggest that you hire Mr. Robert Cowherd to
10 work on these issues. In my opinion, at
11 least, there is no bigger issue. The
12 implementation of Chapter 436 is big, but with
13 over half the funeral homes in this state
14 suffering from these other issues, to me,
15 that's the biggest issue facing the State
16 Board, and I'd like to recommend that you hire
17 Mr. Robert Cowherd as your legal counsel to
18 work on this issue. That's not to say that
19 you cannot have other representation in terms
20 of other ongoing issues that are not Mr.
21 Cowherd's expertise, but I don't think there
22 is anybody that is more well-versed in what's
23 going on in this case than Robert. So, those
24 are the two requests. I don't expect an
25 immediate answer, but I would like you to take

1 that under consideration, and we appreciate
2 all that you're doing Mr. Chairman, I have
3 high hopes for the current regime, and
4 congratulations.

5 CHAIRMAN: Well, thank you.

6 MR. SPEAKS: It's all fallen in your
7 lap.

8 CHAIRMAN: It has, hasn't it?

9 MR. SPEAKS: Thank you.

10 CHAIRMAN: Well, Brad, thank you. So,
11 Board members, anybody have a specific
12 question or thought on any of Brad's
13 statements or comments? Okay. Well, Brad, we
14 thank you for that presentation and I guess,
15 at the moment, we'll say taken under
16 advisement and we'll go forward.

17 MR. SPEAKS: Thank you.

18 CHAIRMAN: So, all right.

19 MS. DUNN: I have one question.

20 CHAIRMAN: Yes, ma'am.

21 MS. DUNN: As individuals send in their
22 comments, we're very careful about sending out
23 e-mails. I apologize, maybe Amy's e-mail was
24 posted. Does anyone that's sending comments
25 have any problem with us on putting your

1 e-mail on the Web site with your comments?
2 Well, if you do that, when you send in your
3 comments, would you just say that you've given
4 us authorization to use your e-mail, and,
5 Bill, we may have done the same for you.

6 MR. STALTER: Yeah. I just found out
7 they're posted.

8 MS. DUNN: Okay. I just wanted to
9 make sure.

10 MR. SPEAKS: I don't have any secrets.

11 CHAIRMAN: Okay. Put you on the spot
12 for the moment, Tim, but last week, you asked
13 for a minute or two just -- do you have
14 something today because I forgot to ask you
15 that.

16 REPRESENTATIVE MEADOWS: No. I'm very
17 fine. Thank you, Mr. Chairman.

18 CHAIRMAN: All right. Just wanted to
19 make sure.

20 MS. EULER: Mr. Chairman?

21 CHAIRMAN: Yes, ma'am?

22 MS. EULER: May I give the Board and
23 everyone here just a little bit of an update?

24 CHAIRMAN: Absolutely.

25 MS. EULER: First of all, I'd like to

1 let everyone know that on the AG's Web site,
2 there is now a consumer alert that we posted
3 last week that provides just some basic
4 information for consumers about the NPS claim
5 packets, so I wanted everybody to know about
6 that. And, also, I assume everybody has
7 gotten the word that the SDR has filed a
8 lawsuit. This is a copy of the complaint --
9 140 pages of fun-filled reading -- and this is
10 their first effort to begin the asset-recovery
11 process in the NPS liquidation action. And,
12 also, I assume everybody has heard that Randy
13 Sutton was indicted this week on NPS-related
14 charges, so --

15 MR. SPEAKS: Do you have copies of
16 that?

17 MS. EULER: I have a couple.

18 REPRESENTATIVE MEADOWS: Can I have
19 one of those, Sharon?

20 MS. EULER: Yeah. I think Tab was
21 going to make some more copies.

22 CHAIRMAN: That's on the Web, isn't it?

23 MS. EULER: It's -- well, are you
24 going to post it to our Web site, Becky?
25 It's available through the PACER System, but

1 you have to have an account, and there's a
2 slight charge for it.

3 CHAIRMAN: Okay.

4 MR. OTTO: I posted a pdf link earlier.

5 MS. EULER: Okay.

6 MR. OTTO: If anyone doesn't have it,
7 let me know and I can send it out, and then
8 you'll have to pay for it.

9 MS. EULER: We have to pay for it?

10 MR. OTTO: Yeah.

11 MS. DUNN: I can post it.

12 MS. EULER: Okay.

13 UNIDENTIFIED: (Inaudible.)

14 MR. OTTO: Well, yeah. All of it.

15 There was links to all of it, I think.

16 Somebody had it posted somewhere else, so --
17 but it would be easier if you could do it.

18 MS. EULER: I expect that this will be
19 the first of a long line of indictments we'll
20 see.

21 MR. OTTO: And it's hit the AP
22 national press this morning. I mean, so it's
23 beyond the "Post Dispatch" now.

24 MS. EULER: Yeah.

25 CHAIRMAN: Anything else?

1 MS. EULER: That's all I have unless
2 someone has questions for me.

3 CHAIRMAN: Anybody have a question for
4 Sharon?

5 MS. EULER: Okay.

6 CHAIRMAN: Okay. We'll get started
7 with meeting #2, Senate Bill 1 implementation
8 process.

9 UNIDENTIFIED: Number three.

10 MR. KRAUS: Meeting #3, group #2.

11 CHAIRMAN: Oh, that's right. Group
12 #2. The way we have done this is we have
13 just pretty much let legal counsel, they've
14 worked and kind of put a presentation of
15 section by section together. We've taken
16 comments after that, looked through the
17 bubbles at comments that you all have
18 addressed that we need to -- or what you think
19 we need to look at, and they've tried to
20 consider all that, too. So, I guess, Earl,
21 Sharon, whoever.

22 MS. DUNN: This is the one that we'll
23 start out with.

24 UNIDENTIFIED: Start at this point,
25 400, Becky?

1 MS. DUNN: Yes.

2 CHAIRMAN: Yeah. There we go. Yeah.
3 Starting at 436.400.

4 MR. KRAUS: All right. So, the
5 document you should be looking at starts off
6 with ASB Senate Bill 1 implementation/group #2.

7 CHAIRMAN: Does everybody have that?
8 Okay.

9 MR. KRAUS: And I think that's copied
10 double-sided, so don't forget to look at both
11 sides there as we're going through this. And
12 what we've tried to do last week and this
13 week, too, is assemble people's comments and
14 insert them close to what they're talking
15 about through these different sections, and
16 then just walk through section by section this
17 whole group of sections. And, hopefully, the
18 comments will prompt discussion among the
19 Board and also among those of you here
20 attending so that then the Board can decide
21 how it wants to go forward in implementing
22 these various sections, be that through rule
23 or not, so that's what we're hoping to do.
24 So, unless there are some other thoughts,
25 we'll just dive right in.

1 MS. EULER: Just dive in.

2 MR. KRAUS: All right. Title of the
3 act, 436.400, we didn't have any specific
4 comments about that. I don't know if there
5 are any thoughts or comments about that one,
6 so unless there are, we'll just move on to the
7 next section. The pages are not numbered, so
8 I'll be referring to them by section, and also
9 you'll notice the bubble comments are numbered
10 either with a K and then a number or just a
11 number, so we'll use those to keep track of
12 where we're at. Definitions, Section 436.405,
13 comment K1, we've got we could end up with an
14 -- let's see. We could end up with additional
15 terms to define by rule cannot be inconsistent
16 with the statutory definitions. I think
17 that's a general comment just for the Board to
18 keep in mind that as we're going through and
19 developing a number of rules, that we may use
20 terms that aren't identified in statute, and
21 if they're terms we use consistently
22 throughout the rules, we may want to define
23 those in rule. That being said, there are a
24 number of rules -- the draft potential rules
25 that we talked about last week that we have

1 and that we'll talk about later today, too, as
2 part of this process. So, moving on down,
3 comment 02 at the bottom there -- let's see.
4 Preneed contracts. Maybe we need to set out
5 the rule where there is no delivery, there is
6 no preneed.

7 MS. EULER: Earl?

8 MR. KRAUS: Yes.

9 MS. EULER: I think that's a typo.

10 MR. KRAUS: Is it?

11 MS. EULER: Historically, one of the
12 way the Board has been determining whether a
13 contract is a preneed contract or not is if
14 there is delivery of the goods and services,
15 then it's not a preneed. If there is no
16 delivery of goods and service, then it
17 probably is preneed.

18 MR. KRAUS: Then there is preneed.

19 MS. EULER: Uh-huh.

20 MR. KRAUS: And is that something that
21 you think we need to set out in rule or --

22 MS. EULER: If the Board wishes.

23 CHAIRMAN: Board?

24 MR. REINHARD: Well, you better make
25 it clear. Yes.

1 MS. EULER: Yes?

2 CHAIRMAN: John? Gary?

3 MR. McCULLOCH: So, what's it going to
4 say now?

5 MS. EULER: That one of the ways to
6 determine whether there is a preneed contract
7 or not is if -- for instance, if you are
8 selling caskets, if you -- if Jim signs on the
9 dotted line saying, you know, I want the
10 special super-duty casket and it's \$13,000,
11 and if Jim gives me the money, but I don't
12 give him a casket, then that's preneed. If
13 Jim gives me the money and I give him the
14 casket, then it's not preneed, whether Jim is
15 alive or dead.

16 MR. McCULLOCH: Okay.

17 MS. EULER: And that's one of the
18 bright lines the Board has used in years past.
19 Whether we want to continue to use that or not
20 is a matter of discussion.

21 MR. McCULLOCH: I'm okay with that.

22 MR. KRAUS: Just to try to distinguish
23 just a sale versus a preneed contract.

24 MS. EULER: Right. Right. Because
25 it's really do I get the casket now or do I

1 have to wait till I'm dead, so --

2 CHAIRMAN: So, what other criteria
3 would there be other than that?

4 MS. EULER: I don't know.

5 CHAIRMAN: I mean --

6 MS. EULER: But we can set forth that
7 that's one of the things to look at.

8 CHAIRMAN: Okay. Makes sense to me.
9 So, I think that's pretty much unanimous and
10 everybody here that we would at least say
11 that. Okay.

12 MR. STALTER: Is it open for comments
13 now?

14 CHAIRMAN: Yes.

15 MR. STALTER: As you go?

16 CHAIRMAN: Sorry.

17 MR. STALTER: This is Stalter. I mean,
18 there's always an issue about when you're
19 talking about delivery, are we talking about
20 current delivery or deferred delivery. And as
21 we get into the cemetery exemption, we talked
22 about, you know, you define funeral
23 merchandise into markers and monuments and so
24 forth, so what is it that the Board perceives
25 as a contract for a marker? When does it

1 have to be delivered for it to be an at-need
2 contract versus a preneed contract?

3 CHAIRMAN: Good question.

4 MS. EULER: What the Board has
5 traditionally looked at -- and the context of
6 this has come up infrequently. It hasn't come
7 up so much in the markers issue, but there is
8 a group that was selling caskets, plain box
9 caskets, and if you bought it now before you
10 were dead, they would sell it with shelves so
11 you could use it as a bookshelf until the time
12 you needed it. And there was some discussion
13 as to whether that was preneed or at-need
14 because -- it's true.

15 MR. REINHARD: So, you got one.

16 MS. EULER: -- you weren't dead yet,
17 so you didn't need it as a casket. But since
18 they were delivering it to your doorstep and
19 you could store it in your own basement, put
20 shelves in it -- (inaudible) -- whatever, then
21 that was a sale and not a preneed contract.
22 So, Don?

23 MR. OTTO: That rule will also be
24 useful dealing with the sales-tax issue --

25 MS. EULER: Yes.

1 MR. OTTO: -- I might add, which we're
2 still in discussions with Revenue on how to
3 handle that with monuments, a rule that would
4 be helpful there, too. But what if -- as
5 you're working on the rule, I don't know, do
6 you need to have -- if I order a custom-made
7 casket and it's going to take 60 days before
8 it's delivered to me, you know, I pay the
9 money today, but I'm not getting it for 60
10 days, do you need to -- is that something you
11 need to think about in the rule?

12 MS. EULER: Yeah, probably, because
13 you're -- but you're getting it before death.

14 MR. OTTO: Yeah. Yeah. I know, but
15 you could -- you know, you could -- people
16 could start fudging it saying I'm going to
17 deliver this to you ten years from now and try
18 to get around the rule.

19 MS. EULER: Right. Right.

20 MR. OTTO: So, I don't know. It's just
21 something you might want to think about.

22 MS. EULER: Well, and that's why I
23 think we make the rule saying that this is one
24 indicator. This is one criteria, and not make
25 it a hard-and-fast rule so that -- because

1 people will do things like that.

2 CHAIRMAN: It's almost like intent is
3 the issue.

4 MS. EULER: Yes.

5 CHAIRMAN: Yes, sir.

6 MR. WESTBY: I have another -- this is
7 Dale Westby, and that says provides for final
8 disposition in Missouri of a dead human body.
9 Do we want just Missouri there because if you
10 have a funeral home near a border, you could
11 have a funeral in Missouri and the internment
12 out of Missouri. Should that be modified
13 somehow?

14 MS. EULER: That's a good point
15 because we have an issue and we may have put
16 this somewhere else. You know, we've had some
17 issues on each side of this state about when
18 is it a Missouri preneed contract and when is
19 it not a preneed contract. If you are in
20 Illinois and selling to Missouri residents,
21 are you -- does Illinois law cover or does
22 Missouri law cover? And we've got some ways
23 to address that, so that's a good point to
24 address that here.

25 MR. KRAUS: What section are you

1 looking at?

2 MR. STALTER: I don't know really --
3 kind of elaborate on that. What you're
4 talking about is defining final disposition?
5 In other words, whether we're talking about
6 just the funeral or the burial or both or --

7 MS. EULER: Is the contract for final
8 disposition required to be made in Missouri or
9 is the final disposition in Missouri? I think
10 that's really what you're asking is, because
11 if the final -- if the contract is signed in
12 Kansas City, but the burial is to be in
13 Kansas, is that a Missouri preneed or not? Is
14 that the question you're asking?

15 MR. WESTBY: Correct. That's my
16 question.

17 MS. EULER: Yeah. And I think it's
18 good to define that because I think the
19 position we've taken before is if it's a
20 Missouri resident, then it's a Missouri
21 preneed contract.

22 MR. OTTO: Sharon?

23 MS. EULER: Yeah.

24 MR. OTTO: Under the other -- under
25 the Health Department regulations, final

1 disposition includes removal from this state.
2 So, if the body is in Missouri and it's buried
3 in Kansas, final disposition is the removal
4 from this state.

5 MS. EULER: Okay.

6 MR. OTTO: It's not the burial, and
7 that's what you should be putting under this
8 anyway. So --

9 MS. EULER: Is that a rule or a
10 statute?

11 MR. OTTO: No. That's a statute.

12 MS. EULER: Okay.

13 MR. OTTO: Final disposition is
14 defined as burial, internment, cremation,
15 removal from this state, and then there's also
16 a rule that adds on donation of the body to
17 an educational institution where the body is
18 not being returned.

19 MS. EULER: Okay.

20 MR. OTTO: So, there still is issues,
21 though, where a Missouri funeral home sells
22 the contract to somebody living in Kansas. At
23 the time, maybe they were planning to be
24 buried in Missouri, but they wind up being
25 buried in Kansas. I mean, it can still get

1 tricky, but --

2 MS. EULER: Uh-huh. Yeah. And we
3 have those issues on the other side of our
4 borders, as well.

5 MR. OTTO: Yeah. They've got the same
6 problem.

7 CHAIRMAN: So, I think the thought is
8 you all will be revisiting this and bringing
9 back --

10 MS. EULER: Yeah.

11 CHAIRMAN: Okay. Yes, sir.

12 MR. WARREN: Mark Warren. I have a
13 couple of comments on 405(2) and (6) with
14 respect to the definitions of guaranteed
15 contracts. And one question that some of my
16 clients had is whether or not the definition
17 could be expanded to allow a funeral home --
18 extending the rule to allow a funeral home to
19 collect if the cost of the at-need bill with
20 the theory being that if there is a -- or the
21 funeral home could accept as payment in full
22 the proceeds from, like, a life-insurance
23 policy or an annuity or a trust if they're
24 funded fully prior to death, which would then
25 allow the funeral home to use the current

1 preneed -- or at-need price and receive the
2 amount of money needed to complete the
3 contract. However -- go ahead, Sharon.

4 MS. EULER: I think that that is on
5 the next topic that we -- it suggested that we
6 have a rule that defines the difference
7 between preplanning and prepaying.

8 MR. WARREN: Okay.

9 MS. EULER: Because I think the
10 situation you're talking about is more
11 preplanning because the funding is there, but
12 the contract isn't entered into until at-need,
13 and that's a preplanning situation as opposed
14 to a prepaid situation.

15 MR. WARREN: Okay.

16 CHAIRMAN: Anybody else?

17 MS. EULER: Does the Board agree we
18 need to -- just to clarify that as to what is
19 preplanning and what is prepaid?

20 CHAIRMAN: You guys --

21 MR. McCULLOCH: I think so.

22 CHAIRMAN: Comments?

23 MR. REINHARD: I agree.

24 CHAIRMAN: Gary?

25 MR. FRAKER: Oh, yeah. Yeah. Exactly.

1 CHAIRMAN: Everybody says yes.

2 MR. OTTO: Sharon, that final
3 disposition is 193.015, sub 3.

4 MS. EULER: Okay.

5 MR. WESTBY: What was that, Don?

6 MR. OTTO: 193.015, paragraph 3, is the
7 definition of final disposition.

8 MS. EULER: All right.

9 CHAIRMAN: Ready to move on.

10 MR. KRAUS: All right. Let's see.
11 The trust, insurance, and joint accounts are
12 only ways to finance a preneed contract in
13 Missouri without violating the statute, and
14 that preneed contracts financed in other ways
15 are still preneed contracts. They just
16 wouldn't be valid ways in Missouri. They
17 wouldn't be exempted from being a preneed
18 contract and, therefore, not subject to any
19 regulation. No?

20 MR. FRAKER: Are you struggling with
21 that?

22 MS. EULER: I don't think I understand
23 that rule.

24 UNIDENTIFIED: Say that again.

25 MR. KRAUS: I think there's two

1 different things going on there from this
2 comment. I don't actually recall where the
3 comment came from, but I think it's that there
4 are three types of ways to finance any preneed
5 contract, which is in the law. I don't know
6 if we need to reset that out again in rule,
7 but that there are three ways. But that if,
8 let's say, someone enters into a preneed
9 contract and they finance it some other way
10 that's not one of those three ways, that they
11 can't then come before the Board and say you
12 don't have any authority over me because it's
13 not a preneed contract because we didn't use
14 one of the three required ways. We're using
15 some other way; therefore, we can do whatever
16 we want. So, I think that's what that comment
17 is going towards.

18 MS. EULER: Okay. Okay.

19 CHAIRMAN: Comments?

20 MR. KRAUS: And maybe that's needed
21 and maybe it's not.

22 MS. EULER: I think it is needed.

23 CHAIRMAN: Board, do you all -- the
24 chairman thinks it's needed. Do you guys
25 agree?

1 MR. REINHARD: No.

2 MR. McCULLOCH: So, how do you fix
3 that?

4 MR. KRAUS: You try to explain that in
5 a rule.

6 MR. McCULLOCH: That it is pertaining
7 to these three methods; is that what you're
8 saying?

9 MR. KRAUS: That the three ways are
10 required, but if someone does enter into a
11 preneed contract that's not financed by one of
12 those three ways, you still fall within a
13 preneed contract that is subject to the
14 jurisdiction of the board.

15 MS. EULER: And you're violating the
16 statute.

17 MR. KRAUS: And you're violating the
18 statute.

19 CHAIRMAN: Violating the statute in
20 that you only can use the three ways?

21 MR. KRAUS: Yes.

22 MS. EULER: You're violating the
23 statute in that you are using -- you are
24 selling a preneed product, but not from one of
25 the three State-approved methods.

1 MR. REINHARD: Like a barter or
2 something.

3 MS. EULER: Huh?

4 MR. REINHARD: You mean, like a barter.

5 MR. McCULLOCH: So, you think it's
6 okay to do that?

7 MR. REINHARD: (Inaudible.)

8 MR. KRAUS: No, I don't think it's
9 okay to do that.

10 MS. EULER: Well, no. We've had some
11 companies come up -- they say, well, this is an
12 insurance, this is a trust, this is a unique
13 product.

14 MR. McCULLOCH: No. I mean, you think
15 it's okay for you to try to make something so
16 broad that it's going to bring everything in
17 that we haven't even thought of at this point?
18 I mean, somebody hasn't thought of?

19 MR. KRAUS: Well, I think it's clear
20 in the statute that the authorized ways to
21 fund a preneed contract are trust, joint
22 account, and insurance. I think that's
23 absolutely clear. And what I think this
24 comment is going towards trying to avoid is
25 someone saying that they're not -- that the

1 Board can't do anything to them because
2 they're funding it in some other way and,
3 therefore, they're not a preneed contract.

4 MS. EULER: So, for example, if you
5 came up with this idea that you would have an
6 investment club and everybody who belonged to
7 the investment club would get a contract that
8 would be -- you know, that would be paid for,
9 and it looks like a preneed contract, but
10 you're saying it's an investment club and not
11 a trust or a joint account or insurance
12 situation, we would be able to go and say, no,
13 you're selling preneed. You need to do it one
14 of these ways.

15 MR. McCULLOCH: Again, we need to do
16 it one of those ways, or you're just going to
17 come under all these guidelines?

18 MS. EULER: You need to do it one of
19 these three ways. If you're going to sell
20 preneed in Missouri, you have to fund it with
21 one of these three ways. You can't say if
22 you're an investment club --

23 MR. McCULLOCH: Well, then that's what
24 you want to say then.

25 MS. EULER: Right. Right.

1 MR. McCULLOCH: We're just going to
2 say if you're going to do it, you have to
3 fund it this way.

4 MS. EULER: Right.

5 MR. FRAKER: Yeah. We need to be
6 specific on how this thing is -- yeah. I
7 mean, there is no alternative, we've got to be
8 specific and say this is --

9 MR. McCULLOCH: So, that's how you'll
10 fix that.

11 MS. EULER: Right.

12 MR. McCULLOCH: That's pretty simple.

13 MS. EULER: Right. Because over the
14 years, we've had some very creative marketing
15 take place in this state because people are
16 trying to avoid the preneed laws.

17 CHAIRMAN: Bill?

18 MR. STALTER: This is Stalter, and
19 I'll give you more of a concrete example and
20 it's not being creative because it's been out
21 there a long time. You sell a marker under
22 214 and you put it in an escrow account. We
23 use -- and an escrow arrangement has been used
24 in other states for years, so -- and, really,
25 what you're going to say is that if we have a

1 marker -- a preneed marker sale and they're
2 using escrow under 214, then it's a violation
3 of 436.

4 MS. EULER: You know, the
5 cemetery-exemption statute, we'll address that
6 there.

7 MR. STALTER: Okay. Because, I mean,
8 lots -- we've got to -- we addressed that last
9 time and decided that that didn't work, so --
10 okay.

11 MS. EULER: Because what the -- the
12 point here is to make sure that people who are
13 fly-by-night, people who are going to come in
14 and try to steal money, that we have some
15 tools to stop that. And we -- our goal is
16 not to put all the cemeteries out of business
17 or send all the cemetery operators to jail.

18 MR. STALTER: I'm just playing the
19 devil's advocate.

20 MS. EULER: Yeah. Yeah. And that's
21 good because we need to address that.

22 MR. ZELL: Sharon?

23 MS. EULER: Yes.

24 MR. ZELL: Stephen Zell. What about
25 the guy who trades a cow for a funeral

1 service? I'll give you my best cow and you
2 give me your funeral service. How can you
3 stop that from going on, because that would be
4 restrained --

5 MS. EULER: If you do that at-need,
6 it's no problem.

7 MR. ZELL: What?

8 MS. EULER: If you do that at-need,
9 that's no problem.

10 MR. ZELL: No. On a preneed basis.
11 When I die, you're going to do my funeral, but
12 you have my cow.

13 MS. EULER: That's preplanning and not
14 prepaid. That's no different than having an
15 insurance policy that would pay at the time of
16 death.

17 MR. REINHARD: What if I took his cow?

18 MR. ZELL: I give you -- I've given
19 him a cow.

20 MR. REINHARD: Yeah. He's paying me
21 -- he's giving me the cow.

22 MR. ZELL: Take my cow.

23 MS. EULER: March the cow down to the
24 bank.

25 MR. ZELL: I'm just asking --

1 (Several people talking simultaneously.)

2 MS. EULER: That would be a joint
3 account. But that's a good point.

4 MR. ZELL: Can you stop someone from
5 doing that?

6 MS. EULER: The intent is to have --
7 because there is no way to insure that that
8 cow will be around when the person dies.

9 MR. REINHARD: No, I took the cow.
10 You're saying I took the cow.

11 MR. ZELL: He took the cow.

12 MR. REINHARD: I took the cow in trade
13 for his funeral.

14 MR. ZELL: He's milking it or doing
15 whatever he wants to do.

16 MS. EULER: Then that's fine. Then
17 you should take some money and put it into a
18 trust account -- sell the cow.

19 MR. ZELL: I'm just saying that would
20 be a preneed contract. Would you have
21 jurisdiction over that because it wasn't one
22 of the three ways -- how are you going to
23 stop that from going on?

24 MS. EULER: You know, let's make a
25 note of that and let's see if we can come up

1 with a solution to that.

2 MR. REINHARD: What about, like, a
3 radio station have an auction of a funeral and
4 --

5 MS. EULER: And that's the same
6 category.

7 MR. REINHARD: Okay.

8 MS. EULER: There's got to be a
9 decision -- you've got to look at that and see
10 -- say is this a preneed contract or is this
11 an at-need, or is this just a preplanning with
12 a method of funding identified at the time of
13 need as opposed to giving you the money now
14 and saying, Jim, I want you to take care of
15 this money so that there's money to pay for my
16 funeral when I die. But those are all good
17 points.

18 MR. KRAUS: Yeah. Because, again, I
19 think that there is a prepaying versus
20 preplanning question there.

21 MS. EULER: Yes.

22 MR. KRAUS: But then as to whether the
23 person is paying through money that you go out
24 and put in your barn or a cow that you go out
25 and put in your barn, it's the same thing.

1 It's some kind of asset worth some amount of
2 money.

3 MS. EULER: Right.

4 MR. KRAUS: But under these
5 requirements, you would still be required to
6 do the same thing with that asset, whether
7 it's a cow or money.

8 UNIDENTIFIED: My banker isn't going
9 to be happy, I walk in and want to put that
10 cow in the safety tin.

11 MR. KRAUS: Get a big safety deposit
12 box.

13 MS. EULER: One of the things I
14 learned in law school is never execute on
15 anything you have to feed.

16 MR. OTTO: Oh, I did that. Don Otto
17 again. I think, obviously, a rule is
18 necessary, but when you -- be careful with the
19 -- I'm worried about the distinction between
20 preplanning and prepaying. The easiest
21 distinction would be if you don't enter into a
22 contract that obligates the funeral home to
23 provide the goods and services.

24 MS. EULER: Right.

25 MR. OTTO: But here's the loophole

1 that would pop up then. I give funeral home
2 X or cemetery X \$10,000. You give me a
3 promissory note in exchange. We're not
4 signing a contract, you're not obligated to
5 provide the funeral, but I've given you this
6 money and wink, wink, nod, nod, we know what
7 that's for when the time comes. And if you
8 don't give it to me, well, I've got this
9 promissory note I can execute on you. That
10 would be a real easy way to try to get around
11 436 real quick because we've never signed a
12 contract. I'm not obligated to provide you
13 the goods and services. You've just given me
14 money and I've given you a promissory note.

15 MS. EULER: Hmm. Okay. All good
16 things to think about.

17 CHAIRMAN: One of the things that I
18 just -- okay. That was, I guess I'll say,
19 legitimate, to some extent, that the cow does
20 work, and the radio station, but -- and I may
21 be off the mark here, but for some reason,
22 there is something that, in my inside, says
23 why would we limit ourself to saying you're
24 out of compliance if you've just done those
25 three ways. What if somebody came up with a,

1 really, a valid way to do preneed, and then
2 this thing just says, well, I'm sorry, you're
3 just out of luck?

4 MS. EULER: Then they can come to the
5 Board and the Board can contemplate making an
6 exception for that method.

7 CHAIRMAN: Okay. So -- okay.

8 MR. STALTER: Well, I have a comment
9 to that, is how many different types of
10 transactions do you want to provide oversight
11 to? You know, the joint account is meant to
12 be -- facilitate from the smaller operators
13 because they can't afford a trust, or maybe
14 they don't want to become licensed insurance
15 sellers. So, what you're saying is, here are
16 three types of funding mechanisms that the
17 State will provide oversight to. Maybe
18 there's others, but we don't see enough of
19 them to authorize them. I think that becomes
20 the issue. You look at maybe an escrow,
21 that's -- you know, I don't know what other
22 kinds of plans there are -- surety bonds --
23 and maybe those are the two that we don't
24 cover, but do we get enough of that business
25 to really say that you'll authorize it and

1 want to provide oversight?

2 CHAIRMAN: I guess if there's just a
3 legal way to say that we're not going to be
4 backed into a corner that says that's the only
5 three ways.

6 MR. STALTER: Well, and that's what
7 we're doing right now. And, basically, is
8 that wrong? You're saying here's -- this is a
9 preneed transaction, but we're going to say,
10 you know, define the preneed transaction.
11 Then over here, we're going to say here are
12 the three permissible ways of funding that
13 transaction. Do we need to have more? Yeah.
14 But -- and I know what Earl's version is. If
15 somebody comes up with an escrow arrangement,
16 is it not a preneed transaction? I don't
17 think so. I think it's still a preneed
18 transaction, but it's a valid point is, you
19 know, just because of the way I funded it, did
20 it fall outside the law.

21 MS. EULER: Well, the legislature has
22 told us that these are the three methods of
23 funding preneed contracts in Missouri.

24 MR. STALTER: Yeah.

25 MS. EULER: And so, that's where we

1 are. And I don't think that anybody wanted to
2 say that, you know, Mabel can't go buy her own
3 life-insurance policy and assign it to the
4 funeral home so there's money at the time of
5 her death, or Mabel can't go out and open up
6 some sort of other account and assign it to
7 the funeral home so there's money at the time
8 of her death. But what we do want to do is
9 to leave that in Mabel's hands to make that
10 decision, and not have Mabel give her money to
11 the funeral home and say, funeral home, you
12 take care of my money and not have any way to
13 check to make sure the funeral home is really
14 taking care of Mabel's money. Representative
15 Meadows, do you concur with that?

16 REPRESENTATIVE MEADOWS: That is
17 correct. That is correct. We've had that
18 discussion.

19 MS. EULER: Okay.

20 CHAIRMAN: Okay. Mark?

21 MR. WARREN: Mark Warren. Kind of
22 along the same lines, the 436.405.3 defines
23 insurance-funded -- did you say a single-pay
24 annuity? Does that mean -- (inaudible) --
25 pays are still allowed, but not under the act,

1 or --

2 MS. EULER: You know, Mark Stahlhuth
3 is going to be here this afternoon from
4 Department of Insurance. Why don't we ask him
5 for further clarification on that?

6 MR. WARREN: Okay. Works for me.

7 CHAIRMAN: Okay. Anybody else? I
8 think the Board commented pretty much on
9 everything, Earl.

10 MR. KRAUS: I think so.

11 CHAIRMAN: All right.

12 MR. KRAUS: All right. Moving over --
13 does anyone have anything else on Section
14 436.405?

15 MR. OTTO: I'm not saying you should
16 do this, but is there any contemplation of a
17 rule that would prohibit a funeral home from
18 accepting a life-insurance designation without
19 there being a preneed contract?

20 MS. EULER: No. That's preplanning.

21 MR. OTTO: So -- but, okay. I
22 preplan. I say here's what I would like to
23 have for my funeral. We never sign a contract.

24 MS. EULER: Uh-huh. Right.

25 MR. OTTO: I make the funeral home the

1 beneficiary of my life-insurance policy.

2 MS. EULER: Right. Right.

3 MR. OTTO: We're not going to regulate
4 that?

5 MS. EULER: That's preplanning.

6 MR. KRAUS: Yeah. That's preneed.

7 MS. EULER: Not if you do it on your
8 own accord and there is no guarantee.

9 MR. OTTO: Well, I go into my --

10 MS. EULER: I mean, I'll use me as an
11 example. I see lots of people's preneed
12 contracts, you know. I could get a blank
13 statement of goods and services, and I can
14 fill it out just what I want, and I can give
15 that to my family and I can say, you know,
16 I've got a funeral policy -- or, I mean, I
17 have an insurance policy and I've assigned it
18 to Becky's Funeral Home, and give my family a
19 copy of the statement of goods and services
20 and says here's what I want.

21 MR. OTTO: Yeah. That is one -- yeah.

22 MS. EULER: That's not a preneed
23 contract.

24 MR. OTTO: There's a difference where
25 I do that on my -- I mean, I'm just wondering

1 if anyone sees a difference between where I do
2 that on my own, where I just write down in a
3 little book here's what I would like, and I,
4 without the funeral home's knowledge even,
5 because this happens, make the funeral home
6 the beneficiary of my insurance policy, as
7 opposed to I go into the funeral home, the
8 funeral home says here's how we're going to do
9 it. We're going to -- you're going to assign
10 the funeral -- your life-insurance policy to
11 me, we'll write down all your wishes, but
12 we're not going to sign a contract.

13 MS. EULER: And that is the
14 distinction. In order for there to be a
15 preneed sale, there has to be a preneed
16 contract, because until there's a contract,
17 it's just an advisory, it's just a suggestion,
18 it's just a recommendation.

19 MR. OTTO: But the funeral home is
20 still the irrevocable beneficiary now of
21 somebody's life-insurance policy.

22 MS. EULER: Well --

23 MR. SPEAKS: Yeah, but that's okay.

24 MS. EULER: -- that's a matter of --

25 MR. OTTO: I'm not saying it's bad,

1 I'm just saying do you understand that's a
2 change from the way it is -- the law is today?

3 MS. EULER: Right. Because that's
4 Mabel's choice. Because this is all about
5 putting this in the hands of Mabel to decide
6 as opposed to the funeral home or the
7 insurance salesman or whoever -- not picking
8 on funeral homes. So, if Mabel decides to do
9 that, and there is no contract between the
10 funeral home and Mabel, then it's not a
11 preneed contract.

12 MS. RUSSELL: Sharon?

13 MS. EULER: Yeah.

14 MS. RUSSELL: If Mabel goes into the --
15 Darlene Russell. If Mabel goes into the
16 funeral home with a John Deere insurance
17 policy and she wants to sign that over to the
18 funeral home to go on public assistance or
19 whatever, and she says I want to go on public
20 assistance, I want this to take care of my
21 funeral, that is preneed because --

22 MR. REINHARD: But there would be a
23 contract with it.

24 MS. EULER: She has to do a contract.

25 MS. RUSSELL: Yeah. But the funeral

1 home getting around not doing a preneed
2 contract doesn't mean it's not preneed.

3 MS. EULER: But it's not an exempt
4 asset unless there's a contract.

5 MS. RUSSELL: Correct. But I've seen
6 creative ways that they will just take a sheet
7 and say an irrevocable assignment and they
8 send that in and some agencies accept that.

9 MS. EULER: Right. And that's --

10 MS. RUSSELL: But the clear thing
11 needs to be that if a funeral home takes an
12 assignment -- an irrevocable assignment of an
13 insurance policy that is preneed, it falls
14 under the State Board.

15 MS. EULER: We'll look at that.

16 MS. RUSSELL: Okay.

17 MS. EULER: Because I understand what
18 you're saying, and -- but we need to make this
19 workable.

20 MS. RUSSELL: Okay.

21 MS. EULER: We need to make it
22 workable and feasible for everybody, and Earl
23 and I will talk about that and see if we can
24 come up with something.

25 MR. OTTO: Yeah. Worst-case scenario,

1 you know, little old lady assigns -- makes the
2 beneficiary -- not just assigns, but makes the
3 funeral home the beneficiary, but they never
4 enter into a contract. The little old lady
5 dies, I don't have to give you a funeral. I
6 was good friends with this woman and she
7 wanted me to have the money.

8 MS. EULER: Uh-huh. And we have seen
9 that. I can name names. Nobody in this room.

10 UNIDENTIFIED: But if it originates at
11 my desk and I sell the contract, I sell the
12 life insurance, that's a little bit different
13 than when somebody walks in and wants to give
14 me that CD or give me that life insurance.

15 MS. EULER: Right. And that's a
16 different situation than I go to Jim, who I've
17 gone to church with for the last 40 years,
18 because I know Jim sells insurance. And I
19 say, Jim, I want to buy an insurance policy
20 and Becky's Funeral Home has always done such
21 a nice job with everybody, I want to assign it
22 to go to Becky's Funeral Home so there's money
23 to pay for my funeral on my death. Becky
24 knows nothing about it until Mabel dies.
25 That's not a preneed contract.

1 MR. KRAUS: Now, if Mabel came to --

2 MS. RUSSELL: Because the funeral home
3 didn't know.

4 MS. EULER: Right. The funeral home
5 wasn't involved in the transaction.

6 MS. RUSSELL: Yeah. Well, that's
7 different, yeah.

8 MS. EULER: Yeah.

9 MS. RUSSELL: The difference, if the
10 funeral home doesn't know.

11 MS. EULER: Right. Yeah.

12 MR. KRAUS: Now, if Mabel came to me
13 and said, Earl, would it be a good idea for
14 me to get this nice insurance contract and
15 assign as my beneficiary this funeral home who
16 either does or doesn't know anything about it
17 with no guarantee of anything in return, I'd
18 say, well, no, don't do that. But if she
19 wants to, she can.

20 MS. EULER: And people do it all the
21 time from what I see. I mean, funeral
22 directors, is that true? Don't you see that,
23 or you're made pay on death on their bank
24 account so there's money to pay for the
25 funeral?

1 MR. FRAKER: Yeah. We've had it, but
2 you never know about it. Yeah.

3 MR. REINHARD: Oh, yeah. Never knew
4 the thing -- the account -- well, never knew
5 the account was there and never knew the
6 insurance was there.

7 MS. EULER: Right.

8 MR. REINHARD: Yeah.

9 CHAIRMAN: Representative Meadows?

10 REPRESENTATIVE MEADOWS: Just in
11 discussion now, we had this discussion,
12 Senator Scott, Representative Wasson, and
13 myself, at length. And what I wanted to do
14 was to allow that senior citizen to bring
15 their -- they had a life-insurance policy,
16 because right now, or prior to this law being
17 written, in many small towns across this
18 state, there were people that were coming into
19 the funeral home and they would have a
20 life-insurance policy, and when they were
21 going on State aid, so they could turn that
22 over to the funeral home as part of their
23 insurance, as part of their funeral. And I
24 did not want to stop that provision from
25 happening. We realized that this was

1 something -- and, Don, you may have been
2 involved in this conversation a time or two.
3 I know, Connie, I think you were in there, and
4 we had had different discussions, but I was
5 very adamant about allowing that to happen.
6 We wanted to make sure that we locked that in
7 statute. When we were talking about the three
8 ways to pay, we wanted to make sure that that
9 was still allowed for many senior citizens
10 because many of them, that's all they may
11 have. So, just to try to clarify, that was
12 one of the things that we said that we would
13 set out that we would hope we would maintain
14 that. But I don't think we actually really
15 sat down and defined it verbatim, verbatim.

16 MS. EULER: No.

17 REPRESENTATIVE MEADOWS: But we wanted
18 to say that we wanted to allow that for many
19 of our state's consumers. So, hopefully, I
20 didn't cloud the issue, but it was discussed
21 at length.

22 MS. EULER: And maybe what we do is we
23 define preplan. We'll write up a definition
24 for preplan.

25 CHAIRMAN: That's probably what --

1 REPRESENTATIVE MEADOWS: Because that
2 was a part of that. We wanted to make sure
3 that that senior citizen or that family or
4 that little old lady, Mabel or Sam, were going
5 to be taken care of. And if they had a
6 \$10,000 policy, that's all they had, that that
7 could be acceptable. Or if it was to the
8 family, that they could bring it into the --
9 okay. My mother is in the funeral home and I
10 have been left with power of attorney. I can
11 actually take that \$10,000 and put that
12 towards Mom's funeral. That's why we left it
13 like that.

14 MS. EULER: Right.

15 REPRESENTATIVE MEADOWS: So -- okay?
16 Hopefully, that clarifies it.

17 CHAIRMAN: That helps. I actually
18 want to follow his statement there for a
19 minute and, actually, it'll follow yours, too,
20 in the clarifying of preplanning. We've
21 talked a lot about the need for the contract
22 because it's a \$10,000 life-insurance policy
23 and that kind of thing. The thing that I see
24 probably more in all of that is somebody comes
25 in and they've only got \$2,500 worth of life

1 insurance. It will not pay for the funeral or
2 will not pay for the merchandise. So, you
3 still want to help them get beyond the --

4 MS. EULER: But it's a start.

5 CHAIRMAN: -- family services thing,
6 and it's a start. And so, you go through
7 enough motions that it will allow that to
8 solve their problem. It does go towards
9 preplanning as opposed -- I mean, it's -- they
10 have to have something in their hands, so they
11 have a, you know, written document, so there
12 is teeth in it --

13 MS. EULER: Right.

14 CHAIRMAN: -- but you've still got to
15 help them out, too.

16 MS. EULER: Right.

17 CHAIRMAN: So, okay. Anybody else?
18 All right. Obviously, we have to address that.

19 MR. KRAUS: We'll address that. All
20 right. Moving on then. 436.410, the cemetery
21 exception. Comment 03 kind of gets to the
22 point. Consider defining what's exempt here
23 and what's not. Let's see. See if K4 is the
24 same or something different. Yeah. I think
25 this relates back to our discussion at the

1 last meeting, we were talking about the
2 cemetery exception and, of course, there were
3 a number of cemetery provisions as proposed
4 legislation. Last session, that did not pass,
5 but we still have this exception here. I
6 assume we would want to try to explain to the
7 extent we can what is exempted and what is
8 not, but -- any discussion on that?

9 CHAIRMAN: Further comments?

10 MR. WESTBY: What is your question?
11 It was 410; right?

12 MR. KRAUS: 410; right.

13 MR. WESTBY: What is it that you did
14 last week that you're talking about?

15 MR. KRAUS: Well, we essentially said
16 that there, apparently, is a cemetery
17 exemption and it would be a good idea to
18 explain what is exempt and what is not, and
19 then said, well, we're going to talk about
20 that when we get to Section 410, which is
21 today.

22 MR. WESTBY: Well, I don't think the
23 cemetery -- this is Dale Westby again. I
24 don't think the cemetery portion has anything
25 to do with -- you know, anything that comes

1 under 436 should go under 436. I do agree
2 with that. But, you know, what our concern
3 was, if the cemetery wants to sell a grave
4 opening and closing, a grave space, and a
5 vault, they could do that under 214, and you
6 have the endowed care, put those funds in, you
7 have a segregated escrow account to put the
8 other funds in, and you could still track it.
9 But our opinion is, as long as it's not
10 anything that needs to be an embalmer or
11 funeral director to sell, you know, then it
12 comes under 436. Is that how you guys and
13 gals would look at that or not?

14 MR. McCULLOCH: Say that last part
15 again.

16 MR. WESTBY: If I sell a funeral
17 service, a vault, and a grave space on one
18 contract, well, in my opinion, under 214 --
19 that would all go under 436 then. If a
20 cemetery wanted to sell a grave space, a
21 vault, and an opening and closing, you could
22 do that under a cemetery contract and fund it
23 through 214, through the endowed-care portion
24 and the segregated counterescrow account.

25 MS. EULER: And, again, I think the

1 defining characteristic there is defining what
2 is preneed and what is not --

3 MR. WESTBY: You're having the funding
4 for it. Under 214, we've got some of those
5 definitions passed, and in there, it defines
6 burial services -- what is included in there.

7 MS. EULER: Because when we took out
8 of the definition of funeral merchandise grave
9 lots. And so, what's in the definition of
10 funeral merchandise right now -- caskets,
11 grave vaults, receptacles, other personal
12 property incidental to final disposition of
13 the dead human body, including grave markers,
14 monuments, tombstones, and urns. As a
15 cemetery -- and I don't know much about the
16 cemetery business, so I hope you can help
17 educate me -- somebody comes in to the
18 cemetery wanting to buy a lot, wanting to buy
19 a marker. How do you -- when do you actually
20 do the marker? Do you wait till the person
21 is dead and then buy the marker, or do you do
22 the marker at the time they come in and buy
23 it and put the person's name on it and leave
24 the end date blank?

25 MR. ZELL: Well, it's up to your

1 choice. You can actually give them a choice.
2 You can provide a memorial for them now with
3 no final dates, or, at their request, if they
4 want to -- you can put the money in escrow.
5 It's in an escrow fund, not a segregated
6 account we're trying to go through. And then
7 when they die, Richardson Memorial will have
8 their dates put on then, so it's your choice
9 to do what you want.

10 MS. EULER: Because I know that part
11 of the intent behind this was to eliminate the
12 conflict between 436 and 214 as to what
13 cemeteries did with the money. And since the
14 other part of the cemetery bill that we
15 passed, we may have made things worse rather
16 than helping things, which is what we wanted
17 to do.

18 MR. WESTBY: Say that again. What was
19 that? What did you just say?

20 MS. EULER: The original intent, it's
21 my understanding, was to eliminate the current
22 conflict between 436 and 214 in terms of where
23 you put the money to make it clear that the
24 cemetery money goes under 214 and the
25 funeral-services money goes under 436, but we

1 have this gray area of overlap that we need to
2 figure out what to do with. So --

3 MR. WESTBY: Well -- (inaudible.)
4 Currently, the way it is now, I don't know
5 anybody in their right mind that would put
6 funeral merchandise on a cemetery contract. I
7 mean, it's just not done. You use two
8 contracts; otherwise, you've got a question
9 under 436. (Inaudible) -- we own that. We
10 own that, and we're giving you the --
11 (inaudible) -- rights to it.

12 MS. EULER: Right. Right.

13 MR. WESTBY: So, you know, that's what
14 we try to do under 214 is to have a funding
15 mechanism there to put those funds in the
16 escrow account or the endowed-care fund,
17 whatever one applies. And I don't know why
18 that was difficult to understand. We've got
19 the grave space out of there -- funeral
20 merchandise.

21 MS. EULER: Right.

22 MR. WESTBY: I don't know why that was
23 ever in there anyhow. When you stop and think
24 about it, why is opening and closing in there
25 where funeral merchandise is?

1 MS. EULER: Yeah. I don't know.

2 That's why we took it out.

3 MR. WESTBY: Yeah.

4 MS. EULER: But what's left is grave
5 markers, monuments, tombstones, urns, and
6 grave vaults. Are the vaults sold by the
7 cemetery? I've seen the vaults on the funeral
8 contract -- the goods and services contract.

9 MR. WESTBY: It can be. But you don't
10 have to be a licensed embalmer or funeral
11 director to sell a vault.

12 CHAIRMAN: That's correct.

13 MR. WESTBY: So, a cemetery --

14 (inaudible.)

15 CHAIRMAN: That's right. But I have a
16 question.

17 MR. WESTBY: Okay.

18 CHAIRMAN: Now, you may all throw
19 everything at me because I'm sure this
20 discussion has been had somewhere else, but I
21 wasn't there. Why is it then that -- and you
22 used the word "escrow" a while ago. Just
23 explain the thought to me. If the cemetery
24 can sell the vault, the monument, even the
25 grave space, whatever, do you put that money

1 in an escrow account that somebody is
2 overseeing, because if I sell it on a preneed
3 contract, I've got to have 80 percent of it
4 somewhere.

5 MR. STALTER: Eighty-five now.

6 CHAIRMAN: What -- 85 now. That's
7 right. I need to get my language right.

8 MR. REINHARD: August 28th.

9 CHAIRMAN: That's right. It's not
10 August 28th yet. So, if I do that today.
11 So, what's the difference? Why --

12 MR. WESTBY: The cemetery may not have
13 a funeral home, and if they want to market
14 their products, as well. They may have a
15 funeral home on the property, and still sell
16 it -- the vault through the cemetery or the
17 funeral home. If they have the funeral home
18 and cemetery they both own, well, what
19 difference does it make, in your right pocket
20 or your left pocket, you know. But if you
21 have just a stand-alone cemetery, which we
22 have a lot of, and they want to get into that
23 market, they should be able to do that, and
24 they can legally do that, but you've got to
25 have the funding of 214, which -- (inaudible)

1 -- to put that money and have it tracked so
2 that when we get --

3 CHAIRMAN: And that goes where under
4 214?

5 MR. WESTBY: In the escrow --
6 (inaudible) -- I believe it is.

7 CHAIRMAN: And that's in an escrow
8 account?

9 MR. STALTER: You actually have either
10 an escrow account or a trust account. The
11 escrow account is really kind of a keeper
12 device for the smaller operators.

13 CHAIRMAN: Okay. And it's all of it
14 -- all of the money goes there or a portion
15 of the money goes there -- of the vault sale?

16 MR. WESTBY: All the money goes there.
17 In the escrow account, the 80 percent would
18 have to go in to cover that, but now, it's
19 only 40 percent. Till the 28th, it'll go to
20 80 percent.

21 MS. EULER: I think what Martin is
22 asking is, if Mabel comes in to a cemetery and
23 buys a grave lot and wants a vault and orders
24 a grave marker from you, but Mabel is 60 years
25 old, she's got a long life ahead of her, what

1 do you do with Mabel's \$10,000? I think
2 that's the question Martin is asking.

3 MR. WESTBY: Well, it would go to his
4 fund that he just talked about.

5 MR. ZELL: Well, the grave is a
6 separate item, and that's going to be a deed
7 transferred to her for the right of
8 internment. And money is going to go to
9 endowed care -- 10 percent goes to endowed
10 care.

11 MS. EULER: How much?

12 MR. STALTER: Ten percent.

13 MS. EULER: Okay.

14 MR. ZELL: That's a separate issue.

15 MR. STALTER: There's a distinction
16 between the endowed care and preneed. The
17 endowed care -- and it's part of -- based on
18 the sales price, but it goes in the trust for
19 care forever.

20 MR. ZELL: Endowed care forever with
21 the cemetery -- for the grave. The opening
22 and closing and the -- to be delivered at a
23 later date and/or the memorial would go into
24 an escrow or a trust account until time of
25 need.

1 MS. EULER: A hundred percent?

2 MR. ZELL: Eighty percent.

3 MS. EULER: Eighty percent.

4 MR. ZELL: The memorial, you have the
5 option to say I can freeze this price for a
6 few months, a year, or three years, and then
7 we're going to make it and you can decide what
8 you want to do on those options, so that's one
9 way that you can not have to leave that in
10 there forever. But the opening and closing,
11 that's a promissory to deliver later, will be
12 80 percent in trust or escrow account until
13 the time of need. So, the money is all split
14 up different ways. Again, if you are all done
15 on one contract with the embalming and casket
16 and everything, we agree you would be an idiot
17 and you should have to put all that into 436
18 and lose your grave sale and lose your marker
19 and everything into trust till they die. So,
20 the old provision that we had was separate
21 contracts, and I would write a separate
22 contract for all those things.

23 MS. EULER: Well, what the law says is
24 that the provisions of this section shall not
25 apply to any contract or other arrangement

1 sold by a cemetery where the payments are
2 required to be placed into an endowed-care
3 fund or for which a deposit into a segregated
4 account is required under Chapter 214,
5 provided that the cemetery operator shall
6 comply with these sections if the contract
7 includes services that may only be provided as
8 a licensed funeral director or embalmer. So,
9 I read that to say that if you are a cemetery
10 selling cemetery stuff -- grave markers,
11 vaults, tombstones -- that if you were taking
12 that money and putting it into an escrow or
13 trust account under 214, then you don't have
14 to comply with 436.

15 UNIDENTIFIED: That's correct.

16 MS. EULER: But if you are selling a
17 funeral service or you are selling embalming,
18 then that does fall under 436.

19 MR. WESTBY: We agree with that, so
20 there's -- (inaudible.)

21 MS. EULER: So, it seems to me that
22 the law says already that if you're a
23 cemetery, doing cemetery stuff, you don't have
24 to comply with 436. But if you cross the
25 line and start doing funeral-director stuff,

1 then you have to comply with 436.

2 MR. WESTBY: And I think that's what
3 you folks want to hear, isn't it?

4 MR. REINHARD: I think that's what it
5 says. That's what it says.

6 MS. EULER: That's what this section
7 says.

8 MR. WESTBY: Well, yeah. But, I mean,
9 you know, if it's funeral stuff, you need to
10 be involved. If it's not, if it's cemetery
11 stuff, you don't need to be involved.

12 MS. EULER: Right. And that's what
13 this law says.

14 MR. WESTBY: Yeah. We agree with that.

15 MR. STALTER: Now, what it says is if
16 we put it into a segregated account. There's
17 two things; escrow account/escrow trust,
18 segregated accounting. There aren't any more
19 segregated accounts; they're gone. So, I
20 mean, if we are depositing burial-space funds
21 in an endowed-care trust, that's true. But
22 payments toward the marker?

23 MS. EULER: Where is that money going,
24 though?

25 MR. STALTER: Well, it would go into

1 either an escrow account or a trust account.

2 MS. EULER: And I would say that that
3 would be a segregated account.

4 MR. STALTER: Now, we can go look back
5 at the old 214, and there is a segregated
6 account out there.

7 MS. EULER: Right. I know under old
8 214, but that money is set aside. It's not
9 part of the cemetery's general operating
10 expense. And, to me, that says segregated
11 account.

12 MR. STALTER: Basically, that's what I
13 think the cemetery industry is looking for, a
14 regulation that clarifies --

15 MS. EULER: Okay.

16 MR. STALTER: Okay.

17 MS. EULER: And I think we're all
18 saying the same thing.

19 MR. STALTER: Well, I know last week,
20 it wasn't. We didn't see -- the vote was,
21 you know, not to address this, to clarify it.
22 And that's why they're here to hear -- okay.
23 They want to hear clarification about what
24 they can do going forward.

25 MS. EULER: Yeah. Well, I think the

1 statute that's what -- I agree we need some
2 clarification. I don't know. Board, what do
3 you think?

4 CHAIRMAN: I think --

5 MS. EULER: The statute seems pretty
6 clear to me.

7 CHAIRMAN: Do you think? Yes, sir?

8 REPRESENTATIVE MEADOWS: Mr. Chairman,
9 again, I can remember this, also, and I was
10 just listening through the discussion. Again,
11 having conversations with Representative
12 Wasson and Senator Scott, we -- because this
13 fragmented it out, and what Sharon is saying
14 is partially correct. However -- and this was
15 talked about at length -- if the cemetery
16 sells vaults or caskets, then they should be
17 held to the standards of Chapter 436.

18 MS. EULER: Right.

19 REPRESENTATIVE MEADOWS: So, if they're
20 selling that as part of the funeral, then they
21 should have to enter into Chapter 436.

22 MS. EULER: Right.

23 REPRESENTATIVE MEADOWS: Outside of
24 everything else that what Sharon was saying,
25 the vaults and caskets would also apply.

1 That's why it fragmented itself out. We had
2 had a long discussion about this because, in
3 all honesty, I didn't want -- I was very much
4 against some of that. Yeah. So --

5 MS. EULER: Well, it sounds like we
6 need a rule to clarify that because it's not
7 clear to people.

8 (Several people talking simultaneously.)

9 REPRESENTATIVE MEADOWS: The vault --
10 and I think, Don, that you were probably
11 involved with it a little bit of the
12 discussion, but vaults and caskets were talked
13 about.

14 MR. OTTO: Yeah. I spoke a little bit
15 for you last time, I'm afraid. I hope I --
16 it was my impression that the general
17 consensus was it didn't matter whether you
18 were -- who you were, if you were selling the
19 same stuff, you ought to be treated the same
20 way.

21 REPRESENTATIVE MEADOWS: Exactly.

22 MR. ZELL: Representative Meadows, can
23 you explain that -- why vaults and caskets?
24 What is the distinction?

25 REPRESENTATIVE MEADOWS: Well, it was

1 a part of the funeral merchandise. Yeah. We
2 had a long discussion about this clause.

3 MS. EULER: I'm sorry. Because the
4 cemetery can't use a casket without a funeral
5 director involved, usually -- not always, but
6 usually.

7 MR. KRAUS: That's kind of what I was
8 looking.

9 MR. ZELL: That's not true.

10 MR. KRAUS: This language talks about
11 --

12 MR. ZELL: Because there's independent
13 casket sellers and they deliver it to a
14 funeral home.

15 MS. EULER: Right.

16 MR. ZELL: So, if that cemetery sold
17 caskets, they're acting as an independent
18 casket seller.

19 MS. EULER: Right. Which they can do,
20 but if they're selling caskets or the casket
21 store is selling caskets preneed, they fall
22 under 436. Because everybody who is selling
23 the same product should be treated the same
24 way. Funeral homes aren't going to sell --

25 MR. ZELL: Okay. Now, why are you --

1 then why vaults?

2 MS. BATEMAN: I mean, the vaults are
3 clearly under 214.

4 MR. ZELL: The vaults are never
5 delivered to a funeral home.

6 (Several people talking simultaneously.)

7 MR. KRAUS: Well, what I see as the
8 line on this -- and, I mean, you can disagree
9 -- is that there is an exception for the
10 cemetery operators if what they're doing falls
11 under 214. However, they can be pulled back
12 into 436 if they're including in what they're
13 providing a service that may only be provided
14 by a licensed funeral director. If they're
15 doing that, meaning they can't independently
16 provide that under 214, they would have to be
17 a funeral director to provide that, and if one
18 of those things they're providing falls into
19 that category, they're no longer exempt.

20 MS. EULER: And 214 doesn't cover
21 caskets specifically.

22 MR. WESTBY: That's correct.

23 MR. ZELL: But it does vaults.

24 MS. EULER: Yeah. And I think vaults
25 are a real gray area because we've had

1 problems in the past with preneed vault
2 issues, so --

3 MR. KRAUS: I mean, and we can look at
4 214 again and see how that addresses vaults.

5 MR. WESTBY: Well, we did get that
6 definition of funeral merchandise which is in
7 there. And we also got the cemetery
8 prearranged contract under 214.270. We've got
9 some -- tried to get some clarification there.
10 And if you have that with burial merchandise
11 is a monument, marker, memorial, tombstone,
12 headstone, urn -- (inaudible) -- or a similar
13 article which may contain specific lettering,
14 shape, color, or design as specified by the
15 purchaser, that is their definition of burial
16 merchandise -- (inaudible.) And then the
17 cemetery prearranged contract is any contract
18 with a cemetery operator for goods and
19 services covered by this chapter, which
20 includes the sale of burial merchandise in
21 which the delivery of the merchandise is a --
22 (inaudible) -- under section 214.270 to .550
23 -- (inaudible) -- purchaser, which will also
24 make the contract for goods and services
25 covered by the sections 270 to 550, which

1 includes the sale of burial services to be
2 performed at a future date.

3 MR. REINHARD: So, let me ask this.

4 MS. EULER: Yeah.

5 MR. REINHARD: Bill, how will we -- or
6 anybody know how we could solve this or, like,
7 clear it up in a rule to help everybody?

8 MR. STALTER: Yeah. I think your
9 bickering points are over the casket and the
10 vault, and that's where the overlap will be.
11 I mean, there are two issues about what's the
12 trusting percentage you're going to apply to
13 the overlap items, and then the other issue is
14 oversight. I mean, you've got -- that has to
15 be one in a whole slew of stuff. 214 -- I
16 mean, it was going to, but it -- I mean, it
17 got carved out, so there have to be some
18 issues about, you know, what oversight is
19 going to be provided over the escrow or the
20 trust funding on the other side.

21 MS. EULER: Here's a question for the
22 cemetery folks. Do you see much of -- I
23 mean, somebody could -- Mabel dies. Mabel's
24 daughter goes down to Costco, buys a casket,
25 goes down -- goes and picks Mabel up from the

1 nursing home, puts her in the casket, brings
2 her out to your cemetery and say I want to
3 bury Mom. Do you see that much?

4 MR. ZELL: It's illegal; you can't do
5 it.

6 MR. REINHARD: Why can't you do it?

7 MS. EULER: No, it's not illegal.

8 MR. ZELL: Describe it again.

9 MS. EULER: Mabel dies --

10 MR. REINHARD: Mom dies, I buy a
11 casket at Costco, put her in it, take her to
12 the cemetery, and you would open the grave,
13 put her in your vault, and we're done. I did
14 it, individually, and I was a funeral director.

15 MR. WESTBY: You don't see much of
16 that, though, do you?

17 MR. ZELL: No. I've never seen that,
18 ever.

19 MS. EULER: Okay.

20 MR. STALTER: I think Josh would say
21 you would see -- it's been an increase, but --

22 MS. EULER: Josh would like to believe
23 it happens every day, and the only reason it
24 doesn't is because of the mean and evil
25 funeral and cemetery industry.

1 MS. DUNN: For those that are speaking
2 in the audience -- Dale, I don't know if we
3 got all your comments. We didn't get all your
4 comments a while ago, so, as you comment, if
5 you would kind of move up towards the
6 microphones.

7 MR. WESTBY: Oh, I'm sorry.

8 MS. DUNN: We just want to make sure
9 your comments are reflected accurately in the
10 minutes.

11 MS. EULER: Because, to me, I see
12 vaults as a gray area. Because I know the
13 cemetery sells vaults. I think some
14 cemeteries want a specific kind of vault in
15 their cemetery. Do the funeral homes sell
16 vaults as much as the cemeteries do? Do you
17 sell vaults?

18 MR. REINHARD: Well, yeah. But, see,
19 we don't have a cemetery -- we've got --
20 they're all like this little cemetery.

21 MS. EULER: Yeah.

22 MR. REINHARD: So -- and in their
23 cases, they sell vaults, where we wouldn't see
24 it in a rural area.

25 MS. EULER: Because it seems like

1 there is some overlap on the vaults. The
2 caskets doesn't seem, to me, to be an overlap
3 area because people, 95 percent of the time,
4 are going to use the services of a funeral
5 director when they buy a casket. And if the
6 cemetery is selling a casket, they should be
7 treated like the casket stores or anybody else
8 who is selling a casket preneed.

9 MR. REINHARD: Right.

10 MS. EULER: But the vaults may be a
11 gray area. It is in my mind.

12 MR. REINHARD: It is.

13 MS. EULER: That we need to look at
14 that. Yeah, Don?

15 MR. OTTO: Just one thought; okay? In
16 a regulation -- and I don't know how anybody
17 else feels about this. If the vault is sold
18 in conjunction with a burial plot. You know,
19 we already have the supreme court case in
20 October 2003 that defined that as not sales
21 taxable because it's an appurtenance to real
22 estate.

23 MS. EULER: Right.

24 MR. OTTO: Not personal property. So,
25 we already have a supreme court decision that

1 says a vault is not personal property if it is
2 going to be put onto the ground -- into the
3 ground before delivery to -- you know, before
4 constructed -- you know, before delivery to
5 the consumer, whatever -- however they worded
6 that. It's real complicated. But -- so, you
7 could have a distinction where -- because I've
8 seen this, you know. If you're selling a
9 vault preneed, but we'll put it wherever you
10 want whenever you want it, that's one thing.
11 But if you're selling that in conjunction with
12 -- that it's going to go into this piece of
13 ground here, that's something else. And it
14 seems to me to fall under the supreme court
15 case that says -- because that's the exception
16 to the supreme court case.

17 MS. EULER: Right.

18 MR. OTTO: You know, if it's attached
19 to this piece of ground, it's not personal
20 property anymore.

21 MS. EULER: Jim, in a smaller
22 community where you've got a lot of rural
23 cemeteries, how do you handle that? I mean,
24 Mabel dies, her daughter comes in to make the
25 arrangements. Do you sell her the vault?

1 MR. REINHARD: Right.

2 MS. EULER: Or does the cemetery --

3 MR. REINHARD: No, we sell it.

4 MS. EULER: Okay.

5 MR. WESTBY: This is Westby again. I
6 think I ought to clarify some things, if I may.

7 CHAIRMAN: Go ahead. Go ahead.

8 MR. WESTBY: You're not going to find
9 too many of the situations where these small,
10 rural cemeteries -- and it don't have to be
11 rural. We've got a lot of church cemeteries
12 in St. Charles, they don't sell vaults, they
13 don't -- all they do is opening and closing.

14 MS. EULER: Right.

15 MR. WESTBY: That happens statewide
16 all over. You're not going to find very many
17 cemeteries selling vaults on their own. Some
18 of them may have a funeral-establishment
19 license, I would think, to be able to sell
20 caskets along with it, so then they're a
21 funeral establishment. But I'm talking about
22 stand-alone cemeteries.

23 MS. EULER: Right.

24 MR. WESTBY: You're not going to find
25 hardly any, I don't believe, that will sell

1 caskets. They're going to just sell vaults
2 and opening and closing, and most of them
3 don't sell vaults. But we want to have a
4 funding mechanism, should they choose to do
5 that, that it goes to so that we can track
6 the money and know that 15 percent went into
7 endowed care --

8 MS. EULER: Right.

9 MR. WESTBY: -- this 80 percent went
10 into the escrow account, that sort of thing,
11 and we have that through what we have in 214.

12 MS. EULER: Right.

13 MR. WESTBY: Now, one of the concerns
14 that you mentioned when we came up here that
15 we understood that this Board wanted to
16 regulate the cemeteries, and we don't feel
17 that's necessary.

18 MS. EULER: We don't, either.

19 MR. WESTBY: Good, and we heard that,
20 too, and we're relieved to hear that.

21 MR. REINHARD: We'll be clear on that.
22 I'm speaking for the chairman, but I don't
23 think -- he might want to regulate them, but
24 there's three or four of us don't.

25 MR. WESTBY: Well -- you know. But we

1 just want to make that clear. If this is the
2 talking time, we want to make that clear that
3 we -- you know, nothing against the Board
4 here, but we don't think you should regulate
5 our cemeteries. And some of that came up with
6 some licensing and issues, when I heard the
7 rumors the last week is why I'm here. But as
8 long as you're not interested in that and we
9 can clarify it that cemeteries can make these
10 sales and has a funding mechanism to fund
11 them, that an audit will come in and track it,
12 that's really all we're concerned with, I
13 believe. And as you should be concerned with
14 the same on the funeral side.

15 CHAIRMAN: And the question I have is
16 when you just said audit, trail, and all of
17 those things, is: And that thought is with
18 escrow; is that how that's done with the
19 cemetery?

20 MR. WESTBY: If it's the merchandise,
21 yes. And opening and closing.

22 CHAIRMAN: And that being the vault,
23 whatever.

24 MR. WESTBY: The vault, opening and
25 closing, yes.

1 CHAIRMAN: Okay. And then the
2 percentage of that is what?

3 MR. WESTBY: Eighty percent come
4 August 28th.

5 CHAIRMAN: Okay.

6 MR. WESTBY: It's 40 percent right now.

7 CHAIRMAN: So, equality thought is
8 where my mind mainly is there. It's, like,
9 why do I have to have 85 percent of everything
10 that is on the list, and you guys don't, and
11 it's the same thing.

12 MR. WESTBY: Well, let me give you a
13 little bit of history on that, and I'm a
14 funeral director, too. I've been a funeral
15 director for a few years longer than I've been
16 a cemeterian. In 2002, we fought NPS. They
17 wanted 15 percent to go to the trust, and we
18 fought for 80 percent. And after the whole
19 session come to a conclusion, Senator Howard
20 says it's going to be 40 percent and that's
21 it, which we thought was way inadequate and
22 we've been waiting for an opportunity to get
23 it corrected, and we did get that part
24 corrected this year. It's up to 80 percent.
25 I think 80 percent is a good amount for

1 cemeteries and funeral homes. I know there's
2 a lot of different opinions around the table
3 on that, but I think 80 percent is a good
4 amount and it should stay there. And I'm
5 sorry you guys got stuck with 85.

6 CHAIRMAN: Us, too. Do you have a
7 reporting process on that at the end of the
8 year of where that goes -- into the --

9 MR. WESTBY: We're audited on that, as
10 well, and at one of the hearings a few months
11 ago, at Representative Wasson's hearing, they
12 asked about auditing, and Tom Richards, the
13 executive director of the Endowed Care
14 Cemeteries reported that at that date, as in
15 the past 18 months, every cemetery had been
16 audited, and we created that funding ourselves
17 many, many years ago -- over 20 years ago --
18 and we're kind of proud of the fact that we
19 created the funding for the audits. When the
20 death certificates could start coming out of
21 the counties, we wouldn't get that, so we went
22 in and we charge ourselves a dollar for
23 internment and that goes into the audit fund
24 so we do have funds to do the auditing. And
25 I'm trying to search. Now, Tom told us -- I

1 think about 80 percent of the funding comes
2 from the death certificate and 20 percent from
3 the dollar for internment.

4 CHAIRMAN: Okay.

5 MR. WESTBY: But we do have the money
6 for the auditing, and then that's what's
7 critical. I'm not going to give off line, but
8 your every five years, I don't think is enough.

9 REPRESENTATIVE MEADOWS: Just one final
10 comment with the cemetery folks. If the
11 cemetery sells a vault and, in conjunction,
12 also sells a grave space with that vault, then
13 I can see that that -- that it should fall
14 under Chapter 214. But I think where we get
15 into the gray area, it's like Sharon was
16 saying, vaults are in a gray area because this
17 was discussed. But if they sell the casket
18 with it, then I think we're entering into
19 another situation then. But if they're just
20 selling the grave space and the vault, then I
21 believe that that's where they belong is under
22 214, and I think that they would be in
23 agreement with that. I don't see any of them
24 saying anything from the end of the table, but
25 I think, you know, that was part of the

1 discussion. And I was sitting here making
2 notes in my mind thinking how did we --
3 because there was a long discussion about this
4 because we knew that we were going to run into
5 a snag with this. But, Sharon, would you not
6 agree with that?

7 MS. EULER: Yes. And also to address
8 one of the other things you said, my
9 understanding -- and, Representative Meadows,
10 you can correct me on this -- is that the
11 whole point of this Section 410 was to make
12 clear that this Board doesn't want to regulate
13 the cemetery industry.

14 REPRESENTATIVE MEADOWS: That's true.

15 MS. EULER: Just like we did with the
16 insurance. And that this Board's legislative
17 directive is to regulate what's under its
18 authority. We don't want to regulate the
19 insurance companies; we don't want to regulate
20 the cemeteries; we don't want to regulate the
21 banks, because there are other State agencies
22 that do that. And to help clarify what this
23 Board's scope of authority is.

24 MR. WESTBY: Thank you very much.

25 MR. ZELL: Is that going to be a rule somewhere

1 written down?

2 MR. OTTO: Well, the problem is both
3 this language and the definition of
4 funeral-merchandise language literally came
5 from the cemeterians. The problem was -- I
6 mean, so the cemeterians wrote this language.
7 The problem was they wrote it in anticipation
8 that 214 was going to have some stuff in it
9 that turns out didn't have some stuff in it.
10 So, that was the problem. I mean, this -- I
11 mean, literally, this language was faxed to
12 Senator Scott's office -- I was there when it
13 came in -- from the cemeterian -- from your
14 guy. So, it was, like, this was written with
15 -- the intent was what you want. Now, the
16 problem was, at that point in time, everybody
17 thought 214 was going to be no problem and you
18 were going to get everything you wanted, and
19 that didn't happen, so --

20 MR. KRAUS: I had one other point. I
21 just want to make sure that I'm on the same
22 page as everyone. I'm reading this exception
23 as being contract specific, but I wanted to
24 see what people thought of, let's say, a
25 cemetery does one particular contract. It

1 only has things in it that they can do and
2 nothing that a funeral director only can do,
3 so I think that would clearly fall under the
4 exception. But let's say in their next
5 contract, they add some things that the
6 cemetery can do and that only a funeral
7 director can do, then does that put that
8 entire contract under 436 or just the portions
9 that only the funeral director can do? I
10 think it's the entire contract because of the
11 way it reads.

12 MS. EULER: Yeah.

13 MR. KRAUS: I don't know if anyone has
14 any thoughts on that.

15 MR. WESTBY: Yeah, we agree with that,
16 too.

17 MR. STALTER: Well, I think --

18 MR. KRAUS: You could do two separate
19 contracts and take care of it that way.

20 MS. EULER: Right.

21 MR. WESTBY: If we do like we're doing
22 now, write two contracts, we'll make those.

23 MR. KRAUS: Right. Right. Okay.

24 MS. EULER: And that will make the
25 auditing easier for both the cemetery folks

1 and the --

2 MR. KRAUS: Yes, it would. Yes, it
3 would. But if you do it in one contract,
4 you're going to have some complications.

5 MS. EULER: Right. Right.

6 MR. McCULLOCH: Well, is the
7 two-contract thing still in effect?

8 MR. WESTBY: Well, it's the same as it
9 is currently under 436 because if it's sold
10 only as in the two other items and you put it
11 on there, it all goes under 436.

12 MR. ZELL: Didn't the two-contract
13 part get pulled out of SB 1?

14 MR. McCULLOCH: No. That was there.
15 That wasn't part of the cemetery. I just
16 remember you all putting that all in place
17 many years ago to try to fix all this.

18 MR. STALTER: It's written by a second
19 contract?

20 MR. WESTBY: What's that?

21 MR. STALTER: No. I don't know, but I
22 don't think that's in there.

23 MR. WESTBY: No, that's not in there.

24 MR. STALTER: If it is, you've got it
25 on a unified contract, then what happens?

1 MR. WESTBY: You just have to be
2 educated as to how you're going to sell and
3 under what contracts. Now, any salesperson
4 would know that if you're sitting before a
5 family and you want to sell funeral services,
6 casket, vaults, opening and closing, and all
7 that, one contract on the preneed is
8 wonderful. You've got one down payment and
9 you can spread out the money as it comes in.
10 That's ideal. But when you get into the two,
11 and you have to trust everything under 436,
12 and, again, we own the grave spaces. We don't
13 need to trust them. That's out there in our
14 cemetery, so you would be stupid --
15 (inaudible) -- go into a trust and I don't get
16 paid for it until they die 30 years later.
17 That -- it's just kind of common sense that I
18 need to have some of that in as -- you know,
19 I know there's scoundrels out there, but I
20 want to let you know that every funeral
21 director and every cemetery is not a crook.

22 CHAIRMAN: Thank you. We agree.

23 MR. KRAUS: The Board would agree.

24 MR. WESTBY: Well, I'll tell you what,
25 we came down to those hearings last year and,

1 by God, we heard every cemetery in the state
2 was a crook. But, by God, and we went and
3 stomped our feet a little bit and got that
4 clarified.

5 CHAIRMAN: Well, we heard every funeral
6 director was, too, so -- all right. Any other
7 quick comments? Let's take a break.

8 (Off the record)

9 CHAIRMAN: 436.412.

10 MS. DUNN: Sharon?

11 MS. EULER: Yes. Oh.

12 MS. DUNN: You've got the floor.

13 MS. EULER: All right. This is the
14 grandfather clause to give people some time
15 and to explain transition between the old law
16 and the new law. The first comment, K5, when
17 drafting rules and particularly when
18 addressing the time period immediately
19 following 8/28/09, we want to keep in mind the
20 prior statutes can still come into play, which
21 I think you all have found. Comment 6, can
22 we set out in rule some things from the prior
23 law? Seller gets 20 percent, financial
24 advisor takes out of his trust expense. I
25 know that this statute -- I know it's

1 generated a lot of questions. I've gotten a
2 lot of questions about it in terms of what
3 does this really mean. Does this mean that
4 the old law continues to stay in the cracks,
5 what's governed by the old law, what's
6 governed by the new law. And so, the
7 comment-6 rule, I would suggest that we set
8 out a rule as to what this grandfather
9 provision covers. And it says it shall
10 continue to govern disbursements to the seller
11 from the trust and payment of trust expenses.
12 So, to clarify that this means that contracts
13 that are currently in place regarding payments
14 from the trust to the seller remain governed
15 under the old law or until a new contract is
16 done, and payment of trust expenses, but
17 everything else is under the new law. And
18 that if you are currently registered as a
19 preneed seller and you have a violation of 436
20 outstanding, that you can still be disciplined
21 under the old law and that that discipline can
22 take -- the type of discipline is under the
23 new law, but it's for violations of the old
24 law, so that the whole probable-cause process
25 and all of that goes away under the new law.

1 Joint accounts remain the same, so if you have
2 a joint account currently in existence, then
3 you don't have to change that under the new
4 law. So, does anybody have any thoughts on
5 that, Board?

6 CHAIRMAN: I'm assuming that there
7 will be thought process put into that,
8 something brought back to the Board to look at?

9 MS. EULER: Uh-huh. Yeah. Yeah.

10 CHAIRMAN: All of that.

11 MS. EULER: But does the Board agree
12 that it would help to have a rule setting out
13 specifically what this means in terms of what
14 parts of the old law continue and what parts
15 the new law applies to?

16 CHAIRMAN: Yes? No?

17 MR. FRAKER: Oh, I think so.

18 Absolutely.

19 CHAIRMAN: Very good. I think yes,
20 for sure.

21 MS. EULER: Do you have a thought?

22 CHAIRMAN: Do you have a thought?

23 MR. McCULLOCH: I don't know. Most of
24 it, I understand. I think it says what it
25 says and --

1 MS. EULER: Okay.

2 MR. McCULLOCH: But if you want further
3 clarification, is that all you're saying?

4 MS. EULER: Yeah.

5 MR. McCULLOCH: Just so everybody can
6 understand.

7 MS. EULER: Just to clarify it.

8 CHAIRMAN: Or at least to just look at
9 ways to clarify it.

10 MS. EULER: Yeah.

11 CHAIRMAN: Okay. I'm seeing lots of
12 heads nod. Anybody out there got some
13 comment? That seems easy then.

14 MS. EULER: Okay. And the next
15 comment is related. Maybe set out a ruling
16 under the new law, all money in a trust fund
17 including must go first to the trust. That's
18 kind of the corollary of what the new law
19 provides and what the old law provides. So,
20 we'll put something together for the Board to
21 look at on that.

22 CHAIRMAN: Okay.

23 MS. EULER: Earl, why don't you take
24 back over.

25 MR. KRAUS: You're doing an excellent

1 job.

2 MS. EULER: But my voice isn't going
3 to hold out.

4 MR. KRAUS: Okay. 436.415,
5 provider/seller obligations. Let's see. It
6 looks like we have some terms there that we
7 may need to define. I think those are similar
8 to ones we have seen before; final disposition
9 and such, which, actually, I think we have a
10 -- one of our draft rules from last week that
11 we'll be talking about later goes towards that
12 and I think refers to section 193 as was
13 suggested last week, but we'll see that later.
14 I guess, before I move on from K8 to K9, did
15 anyone have any thoughts on that? No?

16 MR. WARREN: I do, Earl.

17 CHAIRMAN: Oh, Mark?

18 MR. KRAUS: Yes?

19 MR. WARREN: Mark Warren. It's
20 probably a very similar comment to it and the
21 way it was suggested that a rule would allow
22 the insurance premiums be sent directly from a
23 policy owner to the insurance company instead
24 of through, you know, someone else, the seller
25 or a funeral home, and that's the way they

1 work anyway, generally speaking.

2 MS. EULER: Yeah. And I think the
3 same for a trust-funded account so that
4 consumers can send their money directly to the
5 trust without having to go through the seller.

6 CHAIRMAN: Don?

7 MR. OTTO: No. That's exactly --
8 that's safer anyway.

9 MS. EULER: Yeah.

10 MR. OTTO: And it doesn't prohibit
11 that in the statute, so --

12 MS. EULER: Right. But we can enact a
13 rule to --

14 MR. OTTO: Make it clear that that's
15 permissible would be great.

16 MS. EULER: Yes. And give people the
17 idea that this would be a really good idea.

18 MR. OTTO: Uh-huh.

19 MR. ZELL: Have you talked to -- oh.
20 I'm Stephen Zell. Have you talked to the
21 trust companies? Are they going to accept
22 them?

23 MS. EULER: I don't see why they
24 wouldn't not.

25 MR. McCULLOCH: Probably not.

1 MR. ZELL: It's a heavy burdensome for
2 them to open mail and stuff. It's not their
3 job.

4 MR. McCULLOCH: They're not in the
5 preneed business, guys.

6 MR. KRAUS: I assume we're talking
7 about permitting this to happen, not requiring
8 it to happen.

9 MS. EULER: Right. Not requiring.
10 Right.

11 MR. ZELL: I understand, but --

12 MR. KRAUS: So, they wouldn't have to.

13 MR. ZELL: But you're going to permit
14 them, but my trust company won't accept it.

15 MS. EULER: Really?

16 MR. ZELL: I don't know.

17 MS. EULER: That's interesting.

18 MR. ZELL: I'm not saying they won't.
19 I'm saying what if they don't.

20 MS. EULER: Well, that's why we're not
21 going to require it, but we're going to allow
22 it and clarify that it's allowed.

23 MR. KRAUS: Right. So, then that
24 trustee either wouldn't, and whoever uses that
25 trustee, if they want to go find someone who

1 will, then they could do that, or just don't
2 have that available to their consumers.

3 MS. EULER: And I would expect that
4 under this new law, that some of the bank
5 trustees will want that because this new law
6 gives them more accountability. But, again,
7 we're not going to require it, we're just
8 going to throw it out there as it's allowable
9 -- (inaudible.)

10 MR. STALTER: I think the question --
11 Bill Stalter. But when you say all payments
12 have to go to the trustee --

13 MS. EULER: No. Not have to, but may.

14 MR. STALTER: Where does it say that?

15 MS. EULER: It doesn't. That's why
16 we're talking about enacting a rule that says
17 it's permissible for payments to be paid
18 directly to the insurance company or directly
19 into the trust.

20 MR. STALTER: Okay. Let me ask you
21 this question: Can the funeral home -- the
22 seller -- then pool what it receives on
23 payments and then just turn around and make a
24 single payment to the trustee?

25 MS. EULER: Yes.

1 MR. STALTER: Okay.

2 MS. EULER: But they will have to
3 provide the trustee with sufficient
4 documentation as to whose money it is. And,
5 Don, doesn't that -- isn't that the way MFT
6 does it now?

7 MR. OTTO: We -- the Missouri -- at
8 the Trust, we prefer, and when we sign up a
9 new provider, require that the consumer send
10 the money directly to the bank, preferably --

11 MS. EULER: And has that been a
12 problem?

13 MR. OTTO: No. We give them payment
14 books if they want to do it by check. Our
15 preferred method is automatic, you know,
16 transfer -- ACH is the preferred method, but,
17 of course, we, by contract, couldn't require
18 our current people to do that, so we do have
19 a lot of people that aggregate it and send it
20 in, but they have to send in the paperwork
21 that makes it very clear here's how much for
22 each person, but, yeah, we prefer the money to
23 go straight to the bank from the consumer
24 whenever possible.

25 MS. EULER: Does the Board think

1 that's a good idea?

2 CHAIRMAN: Are you in favor of that?

3 MS EULER: John?

4 MR. McCULLOCH: I don't have a problem
5 if you're just going to say that they can.
6 Sure, that's fine.

7 MS. EULER: Yeah.

8 MR. McCULLOCH: If they want to do it
9 that way.

10 CHAIRMAN: All right.

11 MR. KRAUS: K9, with regard to
12 third-party sales, is the funeral home
13 obligated even if the seller is incapable of
14 performing due to insolvency according to the
15 terms of the seller/provider agreement? I
16 guess that's kind of a question that could be
17 answered and/or dealt with by rule if you
18 wanted to.

19 MS. EULER: Well, under .520, it says
20 pretty clearly that they are.

21 MR. KRAUS: Yeah. Do we need to say
22 that again in a rule?

23 MR. REINHARD: No.

24 MR. KRAUS: No? Okay.

25 CHAIRMAN: Anybody else?

1 MR. FRAKER: I'm good.

2 CHAIRMAN: Everybody is good.

3 MR. KRAUS: All right. K10, what about
4 insurance premiums? We did that already.
5 Eleven, they want to set out in rule a couple
6 of things. Provider obligations, funeral
7 director in charge is responsible.

8 MS. EULER: And as a corollary to
9 that, do we want to ask that the seller name
10 for the State Board someone who is the
11 equivalent of the funeral director in charge
12 for the seller as a contact person who is the
13 responsible party -- the responsible person
14 for the seller?

15 MS. DUNN: From my perspective, it
16 would be helpful because now you look up
17 corporation officers or I think it would be a
18 very good thing to have someone designated as
19 your contact in lieu of looking up your
20 corporation president or --

21 MR. KRAUS: For the seller?

22 MS. EULER: Uh-huh.

23 CHAIRMAN: And that would just be on
24 the registration?

25 MS. EULER: Kind of the manager in

1 charge?

2 MS. DUNN: Application for license.

3 CHAIRMAN: Yeah.

4 MR. FRAKER: Or a secondary -- is this
5 what you're asking?

6 MS. EULER: For a preneed seller to
7 name who their manager in charge is so --

8 MS. DUNN: Kind of like your funeral
9 home, your funeral director in charge. Right
10 now, the seller -- you know --

11 MS. EULER: We don't know.

12 MS. DUNN: -- we go to a designated
13 corporation.

14 MS. EULER: And we guess. And
15 sometimes we've sent letters out to our best
16 guess as to who it was, and we've got a nasty
17 letter back from somebody else saying why did
18 you send it to Bob. Don't you know I'm in
19 charge and Bob has nothing to do, and so, if
20 you ask them to designate, then we would know
21 who.

22 MR. FRAKER: So, are you asking the
23 funeral homes that are the sellers to
24 designate their control --

25 MS. DUNN: The seller to designate

1 someone.

2 MS. EULER: The seller. The seller to
3 designate who the manager in charge would be.

4 CHAIRMAN: This would be any seller.

5 MR. FRAKER: Any seller.

6 MS. EULER: Any seller.

7 MR. FRAKER: Okay.

8 MS. EULER: And at a funeral home,
9 that would probably be the same person as the
10 funeral director in charge, but not
11 necessarily.

12 MR. FRAKER: Not necessarily. Okay.
13 I got you.

14 CHAIRMAN: Makes sense to me. I see
15 all yeses. Do you have a comment?

16 MR. OTTO: Well, just make the
17 distinction between a contact person who
18 you're supposed to contact in that little
19 sentence there that says funeral director in
20 charge is responsible. I mean, I don't want
21 the regulation to add more penalties to a
22 funeral director in charge than is already in
23 the statute.

24 MS. EULER: Right. But we would ask
25 each provider and each seller to name --

1 MR. OTTO: A contact person --

2 MS. EULER: Yeah.

3 MR. OTTO: -- that all correspondence
4 and stuff --

5 MS. EULER: Right.

6 MR. OTTO: Yeah. That's fine, but, I
7 mean, just -- that little --

8 MR. KRAUS: For notice, is what you're
9 saying. For notice, is what you're saying?

10 MR. OTTO: Yeah, for notice.

11 MR. KRAUS: Okay.

12 MR. McCULLOCH: Are you going to --
13 like, the funeral home would be responsible.
14 The provider is responsible for the funeral,
15 not the funeral director in charge; is that
16 what you're trying to distinguish?

17 MR. OTTO: Yeah. Yeah. I don't want
18 the funeral director in charge to be
19 personally liable for something that it's
20 actually the funeral establishment's
21 responsibility. That's -- you're right.

22 MR. McCULLOCH: Yeah.

23 MS. EULER: Right.

24 MR. McCULLOCH: Is that what you mean?

25 MS. EULER: Because that -- what we

1 mean is somebody for the provider and the
2 seller to designate as to who we should
3 contact. I mean, those are two separate
4 ideas, but I think what we're talking about
5 right now is if there is a problem, who is
6 the person we should contact.

7 MR. STALTER: Something to the effect
8 that you don't --

9 MR. McCULLOCH: I understand that.
10 Yeah.

11 MR. STALTER: -- you don't designate an
12 individual and then, automatically, it's FDIC
13 as the -- is that what you're suggesting there?

14 MS. EULER: What Don is saying, he
15 doesn't want to see there to be someone who is
16 responsible for misconduct of the seller, but
17 he's okay with naming a person as a contact
18 person for the seller.

19 MS. DUNN: So, Don doesn't want to be
20 designated as the --

21 MR. OTTO: Like a registered --

22 MS. EULER: Like a registered agent.

23 MS. DUNN: Yeah.

24 MR. OTTO: Registered agent, yeah.

25 Yeah.

1 MS. EULER: Yeah. Like a registered
2 agent.

3 MR. OTTO: Yeah.

4 MR. STALTER: But you can designate
5 somebody -- (inaudible) -- in the absence of
6 the designation -- (inaudible.)

7 ?

8 CHAIRMAN: Anybody else? I think the
9 idea is yes.

10 MS. EULER: Okay.

11 CHAIRMAN: Okay.

12 MR. KRAUS: Seller and provider
13 obligations apply to all contracts old and
14 new. Do we need to address that in a rule?

15 MS. EULER: I think it's a good idea.
16 Again, to help clarify what the new law covers
17 and what the old law covers.

18 MR. FRAKER: We may be saying it again
19 and again to establish a clarification as you
20 have a problem that needs to be addressed.

21 MR. SPEAKS: Brad Speaks. So, it's not
22 suggesting that seller and provider
23 obligations would apply retroactively?

24 MS. EULER: No.

25 MR. SPEAKS: It's saying to

1 differentiate between old and new obligations?

2 MS. EULER: It means that -- yeah.

3 CHAIRMAN: So, I'm getting the idea
4 yes on that. Everybody agree?

5 MR. McCULLOCH: Explain further, I
6 guess. I just got lost with your statement, I
7 think.

8 MR. SPEAKS: Well, Brad Speaks again.
9 What that says is, seller and provider
10 obligations apply to all contracts, old and
11 new. That statement by itself sounds like
12 somebody is suggesting the Board interpret the
13 statute to be retroactive.

14 MR. McCULLOCH: Oh, okay. I see what
15 you mean.

16 MR. SPEAKS: And that's illegal.

17 MR. McCULLOCH: And that's -- yeah. I
18 get it.

19 MR. KRAUS: And I think that's set out
20 throughout the statute what's prospective and
21 what's retrospective.

22 MR. SPEAKS: But, instead, they're
23 suggesting let's differentiate between what
24 the old obligations were and what the new
25 obligations were.

1 MS. EULER: Right.

2 MR. SPEAKS: Yeah.

3 MR. FRAKER: And maybe we can't say it
4 enough.

5 MS. EULER: Right.

6 CHAIRMAN: Any other comment? Like I
7 said, I got the idea yes, so --

8 MR. REINHARD: Right. Right.

9 MR. McCULLOCH: Yeah.

10 CHAIRMAN: Okay.

11 MR. KRAUS: 436.420. Let's see.

12 There's a reference there about in sub 3, a
13 provider shall provide -- shall notify the
14 Board and do we want to set out any specifics
15 about that notice?

16 MS. EULER: I think I would suggest
17 that you require the notice to be in writing
18 within -- I would just think that you would
19 want it to be written notice, signed by the
20 person in charge and provided to the Board.
21 Do you want to allow them to provide it to
22 you electronically, so, you know, written
23 either by letter, e-mail, fax?

24 MS. DUNN: Will that e-mail be from the
25 designated agent?

1 MS. EULER: It would need to be from
2 the designated person.

3 MS. DUNN: Yes. I mean, just so
4 someone doesn't get on --

5 MS. EULER: Yeah.

6 MS. DUNN: -- the computer from
7 someone's --

8 MS. EULER: Right. I think we need to
9 --

10 MR. McCULLOCH: That's what we do
11 currently; right?

12 MS. EULER: Yeah.

13 MR. McCULLOCH: You're supposed to
14 notify.

15 MS. DUNN: Right. It wasn't done in
16 the past.

17 MS. EULER: There wasn't any
18 guidelines for when or how.

19 MR. McCULLOCH: Aren't they supposed
20 to be? Aren't they supposed to?

21 MS. DUNN: Well, no, but -- I mean,
22 what we understand is this is happening
23 frequently in this profession with one of your
24 previous third-party sellers. You know, a
25 provider didn't always know that --

1 CHAIRMAN: That they were providing?

2 MR. McCULLOCH: Well, I disagree.

3 MS. DUNN: -- that they were being
4 designated as a provider.

5 MR. McCULLOCH: I would disagree, but
6 okay.

7 MS. DUNN: Well, now, if -- well --

8 MR. McCULLOCH: I think they knew.

9 MS. DUNN: That -- well, we're -- we
10 understand that's --

11 MR. McCULLOCH: It's pretty hard for
12 them to be out selling without you knowing
13 about it, but that's a different subject,
14 different argument.

15 MR. KRAUS: Is there certain minimum
16 information that should be included in the
17 notice?

18 MS. EULER: They -- I would think so.

19 MR. KRAUS: I would think so.

20 MS. EULER: (Inaudible.)

21 MR. KRAUS: Name of seller?

22 MS. EULER: Yeah. There is --
23 (inaudible.)

24 MR. KRAUS: And the same for the
25 provider?

1 MS. EULER: Yeah. And seller license
2 number.

3 MS. DUNN: And something about
4 designated by the agent if that's what we're
5 going to write in the previous rule.

6 MR. FRAKER: Point taken. What did
7 you say?

8 MS. EULER: Do we want the seller to
9 sign off on that consent? Yes?

10 MS. DUNN: Yes.

11 (Several people talking simultaneously.)

12 MS. EULER: So, both the seller and the
13 provider are jointly providing the notice then.

14 MR. KRAUS: The seller to sign off on
15 what?

16 MS. EULER: The notice to the Board.

17 MS. DUNN: And, many times, the seller
18 and the provider may be one in the same.

19 MS. EULER: Right.

20 MR. KRAUS: But they can e-mail it?

21 MS. EULER: Yeah.

22 MR. KRAUS: Okay. So, like a pdf is
23 what you're thinking or --

24 MS. EULER: Yeah.

25 MS. DUNN: Oh, okay. So, it won't be

1 just an e-mail from Brad Speaks Funeral Home?

2 MS. EULER: Right.

3 MS. DUNN: Okay.

4 MS. EULER: But he could e-mail a
5 scanned document that's signed by both parties.

6 MS. DUNN: Okay. Okay.

7 CHAIRMAN: But it does require the
8 document?

9 MS. EULER: Yeah. And you want the
10 original signed document to follow by mail?

11 MS. DUNN: Well, that's the way
12 everything else is done.

13 MS. EULER: Okay.

14 CHAIRMAN: Don Otto, have you got a
15 question?

16 MR. OTTO: Yes. Well, one, you know,
17 the seller is required to notify this Board of
18 every provider it uses, and the provider is
19 required to notify the Board of every seller
20 it uses. If we could get that under just one
21 standard form --

22 MS. EULER: Yeah. Okay.

23 MR. OTTO: -- that would be extremely
24 helpful. And we had a pretty good question
25 over here. This is a problem in the current

1 law, but it's more explicitly a problem under
2 the new law, is when the provider and the
3 seller is one and the same --

4 MS. EULER: Uh-huh.

5 MR. OTTO: -- and it's a sole
6 proprietorship --

7 MS. EULER: Uh-huh.

8 MR. OTTO: -- how do they do a
9 contract with themselves?

10 MS. EULER: They're not required to.
11 There's an exemption for that.

12 MR. OTTO: Okay. That's good. It's
13 right there. It is. It's right there.

14 MS. EULER: No contract is required if
15 the seller and the provider are the same legal
16 entity.

17 MR. OTTO: But does that need to be
18 explained then because then the next thing, it
19 says, "The written agreement required by this
20 section shall include the following things."
21 So, does that mean if you're the same legal
22 entity, you don't have to do any of that?

23 MS. EULER: Right. You don't have to
24 have a written agreement, but if you have --
25 you need to notify the Board that you are

1 selling for yourself and no one else is
2 allowed to sell for you.

3 MR. OTTO: That would be good to make
4 clearer because this is all in one section --

5 MS. EULER: Okay.

6 MR. OTTO: -- that even if you're
7 exempt from having the contract with yourself,
8 you still have to do the following things,
9 just so it's clear.

10 MS. EULER: Okay.

11 CHAIRMAN: Any thoughts? Mark?

12 MR. WARREN: The same comment we had
13 earlier that it might be nice to put into form
14 where the insurance premiums are sent to make
15 it clear to make it directly to the company.

16 CHAIRMAN: Okay. Everybody okay?

17 MR. KRAUS: And we say we do want a
18 form or we don't want a form?

19 MS. EULER: I think a form would be a
20 good idea.

21 CHAIRMAN: All right. All right.

22 MR. KRAUS: 436.425, consumer contract
23 requirements. K13, may want to define or
24 specify the font type and size. Well, we just
25 have rules on everything, don't we?

1 MS. EULER: Well, I have to say that
2 easily read means different things to
3 different people. To lawyers, easily read
4 means five-point type, italic, bold.

5 MR. KRAUS: It's on the piece of paper.

6 MS. EULER: Got a piece of paper.

7 Yeah, Don?

8 MR. OTTO: Oh. Just my suggestion is
9 you don't do a rule on that. I mean, if we
10 -- if you make us put 12-point type on our
11 contract, it's now a 15-page contract.

12 MR. ZELL: Or a 20-page.

13 MR. OTTO: Or a 20-page contract. And
14 I think it should be on a case-by-case basis
15 where you -- the Board decides whether this is
16 easily read or legible or not.

17 MS. EULER: Well, I agree with you in
18 theory, but we will be going to the AHC on
19 this to get discipline against somebody, and I
20 think that the more objective standard we can
21 have, the better it will be for everybody,
22 because I understand your point. Easily read
23 is so subjective of a term that, you know, the
24 AHC commissioner who has 20-20 vision is going
25 to say, well, I can read it, but the

1 80-year-old woman, our friend, Mabel, who
2 signed it, you know, she just signs it, and
3 they're going to just sign it anyway. I mean
4 --

5 MR. REINHARD: Right.

6 (Several people talking simultaneously.)

7 MR. KRAUS: Well, and, also, I'd be
8 concerned that on something like that, if the
9 Board tries to, as cases individually come
10 before the Board, and they try to be
11 consistent in how they deal with people, which
12 they're going to try to be, will they end up
13 inadvertently applying an unpromulgated rule
14 in trying to be consistent with all those
15 folks.

16 MR. REINHARD: We want a 12.

17 CHAIRMAN: Brad?

18 (Several people talking simultaneously.)

19 MR. SPEAKS: Brad Speaks. I'm
20 curious, is there precedent for this in other
21 types of contracts? In other words, if a
22 person goes into a bank for a consumer loan,
23 what are the requirements there?

24 MS. EULER: There are requirements.

25 MR. SPEAKS: Because, usually, the

1 back page of that document is, you know,
2 fairly small. It's definitely not 12-point,
3 and probably more like five.

4 CHAIRMAN: Mark has --

5 MR. WARREN: There is some case law
6 with respect to what size font and what size
7 type. Most of it applies to disclaimers that
8 may be contained, like, on the back of a
9 contract. One I can think of, there was a
10 case called Allied vs. Vic Chaney, which was
11 like a gym, and the court of appeals talked
12 about --

13 MR. REINHARD: That's where Don goes.

14 MR. WARREN: -- disclaimers have to be
15 in big enough type and maybe even a different
16 color, you know, in order to be valid. So,
17 you know, you can argue this -- how many
18 spirits can dance on the head of a pin kind
19 of thing, but there is some case law out there
20 with respect to at least certain themes that
21 you're putting in there that disclaim
22 liability or something like that.

23 CHAIRMAN: Darlene?

24 MS. RUSSELL: Isn't the FTC on the --
25 (inaudible) -- on your notice of cancellation,

1 isn't that a certain point type? Maybe going
2 with something with the FTC already has,
3 because I think they even reference that point
4 type on the FTC. Wouldn't that make it easier?

5 MS. EULER: Yeah, they do.

6 MR. REINHARD: Well, then why don't we
7 go back to --

8 MR. McCULLOCH: I don't think the FTC
9 does, but the federal government does on their
10 three-day disclosure.

11 MS. RUSSELL: That's what I'm talking
12 about.

13 MS. EULER: Yeah.

14 MR. McCULLOCH: Yeah.

15 MS. EULER: Yeah. The Truth In
16 Lending Act has requirements.

17 MR. McCULLOCH: Truth in -- it does,
18 but I think it's -- isn't it like 10-point or
19 something like --

20 MS. RUSSELL: I think 10-point is the
21 --

22 MR. McCULLOCH: Because ours is that
23 way. Even though this Board told us not to
24 do that, by the way, which -- (inaudible.)

25 MS. RUSSELL: Well, I was just

1 thinking for an argument for you, Earl, that
2 you could say we followed the same as the FTC
3 and used the 10-point or whatever.

4 MR. KRAUS: And how could they be
5 wrong?

6 MS. RUSSELL: How could they be wrong.
7 Exactly.

8 MR. KRAUS: Exactly. "You mean, Your
9 Honor, you're going to find the entire federal
10 government is wrong in this matter?"

11 MR. MARTIN: Well, I hear a lot of
12 fors and a lot of I don't knows, so what's
13 the ultimate answer here?

14 MR. REINHARD: When has this ever been
15 an issue?

16 MR. OTTO: This makes it more
17 complicated, I know, but, from my perspective,
18 it would be better if the Board said certain
19 disclosures or the following things should be
20 in a certain size type. Literally, our
21 contract right now, I don't know what size
22 type it is, but it's front and back, legal
23 size, full up.

24 MS. EULER: Can you read it?

25 MR. OTTO: I think you can read it

1 really well.

2 MR. McCULLOCH: Yeah, you can read it
3 real well. I agree with him because they're
4 just going to -- you're going to cause us to
5 have too much stuff. We even do this shading
6 in some areas where we want them to see
7 certain things, which I think is really good,
8 but that's just our own preference. But
9 you're going to get a contract that's way too
10 much --

11 MR. OTTO: Well, wait. I've got one
12 out in the car.

13 MS. RUSSELL: I've got one here, front
14 and back.

15 MR. McCULLOCH: But yours is easily
16 read, though.

17 MR. ZELL: I have a question, though.
18 If you went to 12-point -- this is Stephen
19 Zell. If you went to 12-point, you're going
20 to have some numbers on page 1 and 2 and then
21 signature on page 10 or 12. And I just -- I
22 think that's more crazy than trying to give
23 them something usable.

24 (Several people talking simultaneously.)

25 CHAIRMAN: What is this?

1 MS. RUSSELL: It's 10-point --
2 10-point.

3 CHAIRMAN: Ten?

4 MS. RUSSELL: And except for the FTC
5 disclosure; it's got to be bold. Maybe your
6 disclosure should be bold, but in 10-point.

7 MS. EULER: Well, maybe we set forth a
8 minimum that it has to be more than five-point
9 or it has to be more than six-point or --

10 CHAIRMAN: Anybody else want to see
11 this?

12 MR. REINHARD: What's normal type,
13 Becky?

14 MR. McCULLOCH: What do you think this
15 size is right here?

16 MS. RUSSELL: Ten, eight.

17 MR. KRAUS: That's probably ten or
18 eight.

19 MS. RUSSELL: Ten or eight.

20 MR. REINHARD: Well, when you turn on
21 Word, what's it come out?

22 MS. EULER: Twelve.

23 MR. REINHARD: Twelve?

24 MS. RUSSELL: That is ten.

25 UNIDENTIFIED: I think the phone book

1 is printed in four.

2 (Several people talking simultaneously.)

3 MS. EULER: I mean, the -- what we
4 have -- what's in the bubble are just comments
5 and suggestions. They're --

6 MR. KRAUS: Yeah. That's just to
7 promote discussion. I don't think anyone is
8 advocating any particular size.

9 (Several people talking simultaneously.)

10 MS. EULER: They're not set in stone.
11 I think it would be good to have some standard
12 because when we go to the AHC, I don't want
13 to have to be arguing with the other side --

14 (Several people talking simultaneously.)

15 CHAIRMAN: One at a time.

16 MS. EULER: -- that three-point type is
17 readable. I mean, how do you prove that up?
18 You bring in an expert that's going to cost
19 money to say I can't read three-point type.
20 It's not easily read. Whereas if you have an
21 objective standard, then it's enforceable.

22 MR. FRAKER: Maybe we should look at
23 just a minimum standard and let it go. I
24 think we're chasing rabbits.

25 CHAIRMAN: So, Board? Give us the

1 thought. It's your decision.

2 MS. EULER: Yeah.

3 MR. McCULLOCH: Minimum standard, and
4 what would that be, you think?

5 MS. EULER: Whatever you want. It has
6 to be larger than five-point?

7 MR. SPEAKS: No smaller than five or
8 something like that.

9 MR. McCULLOCH: Which is much -- is
10 this, like, five? What do you think that is?

11 MS. EULER: That's eight.

12 MR. REINHARD: No. The gray, what
13 would that be?

14 (Several people talking simultaneously.)

15 MS. EULER: I don't know.

16 MR. McCULLOCH: That's eight? This
17 is --

18 MR. REINHARD: Well, can you call Tab
19 up and have her do sizes for us?

20 CHAIRMAN: Well, Darlene said her
21 contract was ten.

22 MS. DUNN: I've got the Federal Trade
23 Commission --

24 (Several people talking simultaneously.)

25 MS. EULER: Can you pull -- do you

1 have this document on-line? Can you just --

2 (Several people talking simultaneously.)

3 MR. McCULLOCH: She's going to bring
4 us some sizes back here.

5 MS. EULER: So, this is 12 and the
6 bubble is 10?

7 MR. KRAUS: Really?

8 (Several people talking simultaneously.)

9 CHAIRMAN: Okay. They need to know
10 what to do.

11 MS. EULER: I mean, Don, what size
12 font are your contracts?

13 MR. OTTO: I don't know. I thought I
14 had a blank one out there and I don't. The
15 ones I've got have got people's names on them,
16 so I can't --

17 MR. REINHARD: Well, bring them in
18 here. We want to check them out.

19 MR. OTTO: I'll get you one.

20 MS. EULER: Because, Darlene, that is
21 --

22 MS. RUSSELL: Ten.

23 MS. EULER: -- ten.

24 (Several people talking simultaneously.)

25 MS. EULER: So, I'm hearing people say

1 ten. The contract Darlene has is ten and I
2 can read it. I don't know.

3 MR. OTTO: I'm guessing -- I mean, we
4 include a lot of stuff that we don't have to
5 include, probably, because we like to spell
6 out some of the statutes language on there.

7 MS. EULER: Yeah.

8 MR. OTTO: And I'm thinking the
9 smallest type is what's in the bubble if
10 anybody knows what that is.

11 MS. EULER: And that's eight.

12 MR. REINHARD: The bubble is an eight?
13 (Several people talking simultaneously.)

14 MS. EULER: Ten. Ten.

15 MR. McCULLOCH: I don't think so.

16 MR. REINHARD: I think the bubble is
17 smaller.

18 MS. RUSSELL: That's eight.

19 MR. SPEAKS: That's too big for eight.

20 CHAIRMAN: I think the bubble is
21 smaller than eight, personally, but I --

22 MR. McCULLOCH: Connie is going to run
23 some off for us.

24 CHAIRMAN: So, do you want to table the
25 thought for the moment?

1 MR. KRAUS: The question of the bubble.

2 CHAIRMAN: The question of the bubble.

3 MR. KRAUS: And, of course, I --

4 MR. REINHARD: John also had a point
5 here, too. The person has got to be able to
6 read, so put that in the rule.

7 MS. EULER: You have to pass a reading
8 test?

9 MR. REINHARD: Right.

10 MS. EULER: (Inaudible.)

11 MR. REINHARD: Well, that's just the
12 way it goes.

13 MR. McCULLOCH: And you also have to
14 do these in Spanish.

15 MR. OTTO: Can all our contracts be
16 in, like, Swahili, or --

17 MS. EULER: Wing-Ding.

18 MR. REINHARD: (Inaudible.)

19 MS. EULER: Don, Wing-Ding font.

20 MR. OTTO: Wing-Ding font.

21 MS. EULER: Yes.

22 MR. ZELL: Now, you have 40 pages.

23 MR. KRAUS: I'm thinking from, you
24 know, once we get to drafting the rule, that
25 that's talking merely about defining what the

1 font type is referring to, and that easily
2 read and shall clearly and conspicuously set
3 out the following are separate criteria in
4 that you could have a contract that has
5 10-point font, but nobody is going to be able
6 to read it because it's been copied 3,000
7 times and it's all blurred and you can't tell
8 what it says.

9 MS. EULER: Right.

10 MR. KRAUS: Does anyone disagree with
11 that?

12 MR. FRAKER: No. I agree with that.

13 MS. EULER: Yeah.

14 MR. REINHARD: So, we can't copy the
15 contract over how many times?

16 MR. KRAUS: You've got to use a good
17 copier, 2,874 times.

18 CHAIRMAN: So, is there a thought?
19 Table? Move on? Relook at it?

20 MS. EULER: Do you want us to draft a
21 rule with some minimum standards and then we
22 can fill in the blank with the font size?

23 CHAIRMAN: Okay.

24 MS. EULER: That's --

25 CHAIRMAN: Here she comes. You're on,

1 Connie.

2 MS. CLARKSTON: Oh.

3 CHAIRMAN: You saved the day.

4 MS. CLARKSTON: I can't get Word to go
5 down past eight point.

6 MR. REINHARD: Do you all want to see
7 that?

8 (Several people talking simultaneously.)

9 MR. McCULLOCH: That's smaller than
10 eight.

11 MR. OTTO: My bank wants me to go --
12 (inaudible) -- but I said, well, that means
13 we're going to add a third page.

14 (Several people talking simultaneously.)

15 CHAIRMAN: I think our ten font is
16 smaller than your ten font.

17 UNIDENTIFIED: I think mine is
18 actually 12. That's even better.

19 (Several people talking simultaneously.)

20 MS. CLARKSTON: Well, and I told John,
21 too, that if you change the font style, it's
22 going to vary -- (inaudible.)

23 MR. RUSSELL: Yeah. Because Times New
24 Roman --

25 MR. KRAUS: It does, yeah.

1 MS. RUSSELL: Times New Roman is the
2 main one. Yeah. You're right.

3 CHAIRMAN: Well, I think there has to
4 be a minimum standard of something here.

5 MR. REINHARD: Ten. Ten. Because
6 that's easily read.

7 CHAIRMAN: Yeah. Well, I agree.

8 MR. REINHARD: And that's ten.

9 MR. WESTBY: I have a question while
10 you're thinking that over.

11 CHAIRMAN: Oh, yeah.

12 MR. WESTBY: We're going to have to
13 have these contracts done by the 28th, aren't
14 we? Are we going to have our rules done by
15 then?

16 CHAIRMAN: Do you think we're going to
17 answer that question?

18 MR. WESTBY: Well, but you know, I
19 told -- (inaudible) -- put it on a word
20 processor in-house because, you know, once
21 these rules come out, you could have a whole
22 bunch of different things to deal with, you
23 know, just -- (inaudible.)

24 CHAIRMAN: Yeah.

25 MR. ZELL: Well, to follow up on that,

1 is it August 29th or is it July 10th?

2 MS. EULER: It's August 28th. They go
3 into effect August 28th.

4 MR. ZELL: So, if someone is using a
5 contract that is in the wrong font, you're
6 going to --

7 MS. EULER: I would --

8 MR. ZELL: You can't do that --

9 MS. EULER: I would suspect if someone
10 uses the wrong contract on August 29th and the
11 Board calls them in for discipline, that you
12 could beg for mercy.

13 MR. WESTBY: Would that do any good?

14 MS. EULER: I don't know.

15 MR. McCULLOCH: Yes, it will from my
16 standpoint.

17 MR. WESTBY: There you go.

18 MS. EULER: But the Board -- I mean,
19 and that's one thing about this process is
20 that the new law sets out what needs to be in
21 the contract pretty clearly. The Board is
22 going to have rules ready to go on August 28th
23 to be filed. And even though they won't be
24 in place, you'll be on notice as to what these
25 contracts need to require. Yeah, Don?

1 MR. OTTO: We talked about this last
2 time, you know. And what I think we need to
3 have is -- I mean, personally, is an emergency
4 rule that says for such and such a period of
5 time, you just addendum -- a separate addendum
6 page shall be attached to all contracts that
7 spells out the following XYZ things, because
8 it's going to be physically impossible --

9 MS. EULER: Right.

10 MR. OTTO: If you had the rule today,
11 there is no way I can have enough contracts
12 out to people by the 28th.

13 MS. EULER: Right.

14 MR. OTTO: We can't do it. So, we're
15 either going to have to use the old contract
16 or tell people, sorry, I can't sell you a
17 preneed for a month until I get these
18 contracts worked out. So, I think we need an
19 emergency rule that says until -- I don't
20 know; pick a date, whatever -- November 1st or
21 whatever -- that until such and such a date,
22 all contracts shall have the follow -- you
23 know.

24 MS. EULER: (Inaudible.)

25 MR. OTTO: If a contract was written,

1 you know, before August -- you know, prepared
2 before August 28th, it shall have the
3 following page addendum attached to it.

4 MR. FRAKER: I think we addressed this
5 at the first meeting, didn't we?

6 CHAIRMAN: John?

7 MR. McCULLOCH: I agree with what he
8 just said, first thing. Secondly, just a
9 thought for you. We use -- kind of like the
10 insurance companies do, we use an application
11 process that the people fill -- we fill out --
12 the counselor does. That comes back into the
13 office, we accept or deny at that point in
14 time. But if we decide to issue the trust
15 certificate and accept, then the application
16 becomes part of the contract. Is that going
17 to be okay still with everybody, do you think?

18 MS. EULER: Uh-huh.

19 MR. McCULLOCH: No problem? Because
20 we have some things -- some of these things
21 that are going to be required are on the
22 application and some are probably the actual
23 trust certificate, but it becomes part of it.
24 We say it will become part of it.

25 MS. EULER: So long as it's clear to

1 the consumer what constitutes their contract,
2 I don't see a problem.

3 MR. McCULLOCH: Well, it is part of the
4 contract.

5 MS. EULER: Right.

6 MR. McCULLOCH: Because, like, our
7 irrevocable is on there and some different
8 things.

9 MS. EULER: Uh-huh. Yeah. If the
10 contract -- (inaudible.)

11 MR. McCULLOCH: The disclosures about
12 we didn't tell you you had to have a casket,
13 a vault; all that kind of stuff is on there.

14 MS. EULER: Yeah. Yeah. I don't see a
15 problem with that.

16 MR. ZELL: I reiterate -- Stephen
17 Zell. I reiterate that it -- not even
18 November. I mean, you're talking a lot of
19 printer time, rewrites, corrections. It's not
20 going to be easy.

21 MS. EULER: Did we do this before? I
22 think we talked about it.

23 MR. REINHARD: We talked about it.

24 MS. EULER: Did we draft a rule on it?

25 MR. FRAKER: Maybe even January the

1 1st or later, because we talked about not
2 putting so much on Becky and the staff to get
3 this stuff --

4 MR. REINHARD: Yeah. Gary had, like,
5 October 1st, and I think that we --

6 CHAIRMAN: I think everybody is at
7 least on the train that says everybody
8 understands that this just isn't going to be
9 feasible, that this just happens like that,
10 magically on that date. And there's big
11 issues to be overcome. Can we just sit here
12 and flat say that, you know, it's a certain
13 date or whatever. I don't -- are we?

14 MS. EULER: I would recommend you do a
15 rule.

16 MS. DUNN: (Inaudible) -- emergency
17 rule.

18 CHAIRMAN: Okay.

19 MR. KRAUS: Well, we did talk about --
20 let me see if I can find it here --
21 enforcement of the rules and the statutes
22 going forward and how we're going to do that
23 in the emergency-rule period and then out
24 through some date with a notice of intent to
25 continue business and all that, because, of

1 course, you're not going to be licensed,
2 either, on the 28th. And we talked about how
3 the Board was going to address that. And we
4 actually have a draft rule that we talked
5 about or we prepared, brought back to the
6 Board at the last meeting and talked about --

7 MS. EULER: The licenses.

8 MR. KRAUS: -- which addresses that to
9 some extent, and I was thinking that it was
10 general enough to -- let me see if I can put
11 my hands on it -- general enough to deal with
12 enforcement of issues across the board, I
13 thought.

14 MS. EULER: And I think we could add
15 something to it to address that concern
16 because it's a valid concern, I think.

17 MR. KRAUS: Sure, it is.

18 CHAIRMAN: Gary?

19 MR. FRAKER: Let me address this to
20 Tim, in all fairness. I'm sure this was
21 discussed thoroughly in your meetings; is that
22 not correct? What was your take on this, Tim?
23 Is this -- I'm sure you realized --

24 REPRESENTATIVE MEADOWS: Well, my take
25 is what we were -- we were going to leave

1 this up to the Board. We knew that it wasn't
2 going to happen, like, overnight, and we knew
3 that, you know, first, again, you know, we
4 didn't --

5 MR. FRAKER: Well, you must have had
6 some expectation, at least, of --

7 REPRESENTATIVE MEADOWS: Right. We
8 knew that there was going to be some type of
9 struggle. And when -- Sharon is correct that
10 you guys need to impose a rule on how you're
11 going to do that. But I would suggest that
12 you leave it by such and such a date because
13 it has to all be conformed with by such and
14 such a date. Would you not agree with that,
15 Sharon?

16 MS. EULER: Yes. Yes.

17 MR. FRAKER: What would be --

18 REPRESENTATIVE MEADOWS: I think
19 that's -- we knew that we weren't going to get
20 all this done by the time of the end of
21 session and so forth and so on. I mean, and
22 we understand that, but, I mean, as long as
23 you're hitting some of these marks, that's the
24 high part.

25 MS. EULER: Did you have a date in

1 mind?

2 MR. FRAKER: Did you have something in
3 mind, Tim?

4 REPRESENTATIVE MEADOWS: No, we didn't
5 have a date specific.

6 MS. EULER: Well, I think --

7 MR. KRAUS: I think the date that was
8 discussed last time and we were -- I think we
9 were talking about December 31st just as a
10 date that was thrown out for discussion. And
11 then I think some brought up, well, what about
12 just going to July 1st of 2010 because that's
13 the other date.

14 MS. EULER: But I think you need to
15 set it out in rule, one, so everybody gets the
16 same information and it's clear as to what is
17 covered, because you don't want anybody to
18 come back and say, well, I was at the Board
19 meeting and they said anything goes. Olly
20 olly oxen free.

21 MR. McCULLOCH: But we didn't say that.
22 That's clear. No one has said that.

23 MR. KRAUS: No, we didn't.

24 MS. EULER: Right.

25 MR. McCULLOCH: No one is insinuating

1 that.

2 MS. EULER: Right. But that's why you
3 need a rule so that everybody gets the same
4 message by the rule and the people who are
5 here don't hear one thing and the people who
6 aren't here --

7 MR. McCULLOCH: The rumor?

8 MS. EULER: -- rumor. Rumor, that's
9 it. The rumor mill.

10 MR. KRAUS: Yeah. And I think I have
11 that back -- I must have that back at my desk
12 since that was last group's, but --

13 MR. FRAKER: Well, I think we talked,
14 Earl, about setting this in motion ASAP, but
15 not enforcing it until we had a certain time.

16 REPRESENTATIVE MEADOWS: I have a
17 question, Mr. Chairman.

18 CHAIRMAN: Yes, sir.

19 REPRESENTATIVE MEADOWS: Tim Meadows,
20 for the record. Has your Board or have you
21 started the process of implementing the form
22 and this process? Have you done that outside
23 of any type of meeting other than the meetings
24 that we have established here? Has this
25 already started to take roll through the State

1 Board, what we're talking about here right now?

2 CHAIRMAN: We have --

3 REPRESENTATIVE MEADOWS: Have you
4 started that process?

5 CHAIRMAN: Well, the application of
6 intent to comply, we have.

7 MS. DUNN: Yes.

8 CHAIRMAN: We have started that --
9 working --

10 MS. EULER: We started working on the
11 forms.

12 MS. DUNN: Through the direction of
13 this group, we -- last week, we had just a
14 draft form.

15 REPRESENTATIVE MEADOWS: I see. Okay.
16 I would just caution you that you do this, and
17 I'm just -- I know what the law says and,
18 technically, you would be in violation, so
19 you're going to have make sure that you have
20 some type of rule in place. But I would
21 caution you that you not take it any further
22 than what this gentleman over there was
23 saying, past December 31st. I would hope that
24 you would get it implemented as soon as
25 possible, not that you establish July of next

1 year because we know in July of next year, are
2 you going to have it done July of next year?

3 CHAIRMAN: Right.

4 REPRESENTATIVE MEADOWS: Then we're
5 going to have to extend it again. So, you
6 know, that you be firm in where you're going.

7 CHAIRMAN: Sure.

8 REPRESENTATIVE MEADOWS: So, the other
9 funeral homes across the state have some
10 guidance, as well, so they know, you know,
11 because if they don't know and then they're
12 all locked in, not everybody is privy to being
13 here at this time. So, yeah, I would caution
14 that you do it ASAP.

15 MR. KRAUS: Yeah. And this is in a
16 paragraph that we came up in the proposed rule
17 that we brought back last meeting, and we
18 could probably amend this to some extent to
19 make sure that we're covering this area, also.
20 But such -- it says any conduct that may be
21 cause for discipline that occurs between
22 August 28th, 2009, and December 31, 2009 --
23 that's just the date that was put in there --
24 shall be considered by the Board in its
25 decision to issue or deny any application for

1 licensure and/or registration. In addition,
2 if the Board issues a license or registration
3 and later discovers conduct that would be
4 cause for discipline that occurred between
5 August 28, 2009, and December 31, 2009, the
6 Board shall have authority to seek discipline
7 against the licensee or registeree for that
8 conduct as if the person were fully licensed
9 or registered while operating under the
10 authority of the notice of intent. And this
11 is part of a rule that talks about how you
12 can file a notice of intent to conduct
13 business and that will essentially act as --
14 it's not a license, but it enables you to
15 function as if you were licensed until you get
16 a license so that you're not in violation of
17 that provision of the law on the 28th.

18 CHAIRMAN: So, do you think somehow
19 that includes -- their concern is the
20 contracts in itself. Are you thinking that
21 this can include that or there needs to be
22 some language that goes to include that?

23 MS. EULER: There needs to be some
24 language added to specifically --

25 MR. KRAUS: We could add -- we

1 probably do, yeah.

2 CHAIRMAN: Okay.

3 MS. EULER: And if I may make a
4 comment about the dates. I would encourage
5 the Board to set shorter rather than longer
6 time frames because I think we want to get
7 everybody up to speed as soon as possible and
8 get this new law affected. And if we say
9 July 10th or July 1, not lawyers present in
10 this room, of course, but I know that there
11 are some lawyers out there who will say, oh,
12 they don't need that contract until July 1st,
13 so we're going to do it on June 30th. And I
14 think if you give people shorter time frames,
15 then everybody will do what needs to be done
16 within that shorter, but reasonable -- we want
17 to be reasonable -- time frame, and everybody
18 will get up to speed faster. And if there's
19 somebody who has got problems or special
20 circumstances, you know, maybe you could allow
21 for somebody to petition the Board for an
22 extension of time or something. So, you know,
23 if you've got some extenuating circumstance,
24 that that could be taken into consideration.
25 But if you give people a year to get in

1 compliance, people will wait till day 364.

2 CHAIRMAN: Right. Okay. So, I'm
3 basically hearing December 31st being that
4 thought, so --

5 MS. EULER: I think that's a
6 reasonable time frame.

7 CHAIRMAN: I see lots of heads going
8 like this, so, Board, December 31st?

9 MR. FRAKER: Yeah.

10 CHAIRMAN: Yes?

11 MR. McCULLOCH: I'm okay with that.

12 MR. REINHARD: Of 2011; right?

13 MS. EULER: You might specify which
14 year, Martin.

15 CHAIRMAN: Well, he's outvoted anyway,
16 so -- all right.

17 MR. REINHARD: Did we decide the font
18 size? Did we get that?

19 CHAIRMAN: I don't think we ever did
20 totally get --

21 MS. DUNN: Minimum standards or
22 something.

23 MR. REINHARD: Ten.

24 MS. EULER: I'd put eight.

25 MR. REINHARD: Preferably a ten.

1 MR. McCULLOCH: So, the minimum is
2 eight?

3 CHAIRMAN: Well, actually, that's her
4 thought. What do you think?

5 MR. McCULLOCH: I like that.

6 CHAIRMAN: Eight or ten?

7 MS. EULER: We'll put together a rule
8 and bring it back and you can look at it.

9 CHAIRMAN: Okay.

10 MR. REINHARD: No. Let's just get it
11 over with. Let's make it an eight and be
12 done with it.

13 CHAIRMAN: Eight?

14 MR. REINHARD: Eight.

15 CHAIRMAN: Eight?

16 MR. FRAKER: Fine with me.

17 CHAIRMAN: Eight is what she got.

18 MS. EULER: All right.

19 MR. REINHARD: Can you see eight over
20 here? Okay. MR. WESTBY: Which is it going
21 to take longer to do, read the statute or the
22 rules?

23 MR. McCULLOCH: Good point.

24 MR. REINHARD: I think the Bible is
25 going to look like the Bible.

1 MR. STALTER: But you never read that,
2 either, Jim.

3 MR. REINHARD: That's true. Just
4 parts of it every time I need it.

5 MR. KRAUS: So, we're past the font.

6 MS. EULER: Yes. Moving on.

7 MR. FRAKER: Well, have we established
8 a rule on this date -- is this what we're
9 doing now?

10 CHAIRMAN: We just did.

11 MS. EULER: We just did, December 31st.

12 CHAIRMAN: December 31st.

13 MR. FRAKER: We just did, so we're
14 done with that.

15 MS. EULER: We're done with that.

16 MR. KRAUS: Well, and the plan all
17 along has been, on all these rules, if I
18 understand our process, is that we've been
19 marching through all the sections, having
20 discussion about what rules should be. The
21 Board has been making recommendations as to
22 the drafting of rules. Staff then brings back
23 the drafted rules at a subsequent meeting,
24 talk about those, see if that's what you like,
25 if you want any further changes, and then if

1 it looks okay, then putting that aside. And
2 then when we come back to one of our later,
3 like, more final meetings, saying okay, take
4 all of that forward, proceed with preparing it
5 for filing and actually promulgating it. So,
6 I guess I'm saying there is still room to come
7 back to that if we -- because we thought that
8 we would certainly see other sections that
9 would make us think of things that we've
10 already done that we need to go back and
11 revisit like we just did with making an
12 amendment to the notice-of-intent to apply
13 rule. So --

14 CHAIRMAN: Okay.

15 MR. KRAUS: All right. K14, including
16 notice of cancellation. Inclusion of
17 insurance-related provisions in a trust-funded
18 contract and vice versa will be confusing to
19 the consumer.

20 MS. EULER: That makes sense. If
21 you're doing a trust-funded contract and the
22 consumer reads in there that cancellation of
23 the contracts are not cancelling
24 life-insurance funding, they go, "I don't have
25 life insurance."

1 MR. KRAUS: "What are you talking
2 about?"

3 MS. EULER: "What are you talking
4 about? "

5 CHAIRMAN: Darlene?

6 MS. RUSSELL: This might make it
7 harder on you as far as more typing, but to
8 be clear in the rule, could you just say a
9 trust-funded preneed contract must include the
10 following. Even though you'll be repeating
11 yourself when you do it again, when you say
12 the insurance-funded contract must include and
13 then a joint-account contract must include.
14 You'll be repeating some of the same things,
15 but it'll be easier for those when you look at
16 it and say, oh, that's an insurance-funded
17 contract goes under these. These things have
18 to be in it.

19 MR. KRAUS: Just put them in
20 categories on the contracts so --

21 MS. RUSSELL: In categories on the
22 rule -- on the rule, specify it by categories
23 even though you'll be repeating the same
24 thing, name, address, and all of that thing
25 several times -- all three times.

1 MR. KRAUS: That makes sense. If you
2 do that, though, then are you omitting -- are
3 you requiring less in the rule than what's
4 required by the statute?

5 MS. RUSSELL: No. I'm suggesting that
6 you take the statute and, basically, repeat it
7 three times in rule because all three of them
8 are going to require some of the same things.
9 They'll require all the way up to four. It's
10 going to be -- four is going to be all three
11 of them, then five will be just insurance.

12 MS. EULER: Right. And kind of put
13 everything all together in one rule for not
14 just this statute, but all of the statutes,
15 and say insurance-funded contracts need to say
16 one, two, three, four, five.

17 MS. RUSSELL: And that's what I've
18 done. I've done it preneed contracts,
19 insurance, this happens, trust, happens, you
20 know, that type of thing.

21 MS. EULER: That's a good idea.

22 MR. KRAUS: Yeah. I like that and I
23 think that makes a lot of sense. What I was
24 concerned about is whether the statute
25 actually requires this statement about life

1 insurance for all contracts, even trust-funded
2 contracts.

3 MS. RUSSELL: Oh. I see what you're
4 saying, and that is a legal point.

5 MS. KRAUS: And if we're not requiring
6 that in the rule, then is that a problem.
7 Where I thought you were going was to put --
8 to have on your contract this is language for
9 trusts, this is language for insurance, this
10 is language for joint accounts, then it is on
11 the contract, it's just qualified as being in
12 a certain category.

13 MS. RUSSELL: Well, that would be hard
14 for the consumer, though.

15 MR. KRAUS: That's a lot of extra
16 language, though.

17 MS. EULER: Yeah.

18 MS. RUSSELL: Yeah. But I see what
19 you're saying.

20 MR. McCULLOCH: I think you're right,
21 though. I think the statute is clear, it's
22 just that it doesn't make any sense at all to
23 do that.

24 MR. KRAUS: Yeah.

25 MR. McCULLOCH: But, yeah, it's clear,

1 but it makes no sense.

2 MS. EULER: But we could say that --
3 how that disclosure is to be done on --
4 (inaudible.) You know, we could help clarify
5 that. I think people will do it anyway, but --

6 MS. RUSSELL: Well, you have a point.
7 If the statute says it, it's going to,
8 basically, be one contract and then all --
9 everything has to be on it. Wow. I didn't
10 envision that.

11 MS. EULER: No.

12 MS. RUSSELL: Did you envision that?

13 MR. KRAUS: Yeah. I didn't, either.
14 That's just kind of how I think it reads, but
15 -- I mean, we may be able to help that some
16 way in a rule.

17 MS. EULER: Yeah, I think we can.

18 MR. KRAUS: We'll have to toy with
19 that, see if we can come up with some way to
20 do that.

21 MS. EULER: Yeah, I think we can.

22 CHAIRMAN: Don?

23 MR. OTTO: Well, one problem is you
24 might have multiple sources of funding for a
25 preneed contract, you know. It's not uncommon

1 for a person to put, you know, \$3,000 down --
2 Don Otto again. Sorry. -- \$3,000 down and
3 say I'm going to pay the rest at time of need
4 or when -- or later on, I'm going to pay the
5 other amount, and that might be by an
6 insurance-contract assignment. I envision on
7 our contracts -- I've already been working on
8 ours -- ours says that if -- the disclosure
9 that I came up with, it says if any or all of
10 this contract is funded by a life-insurance
11 policy, the cancellation of this contract does
12 not cancel that life-insurance policy. That's
13 how my disclosure reads. But, I mean, that's
14 one issue is that you can have contracts that
15 are -- you know, they're partially funding,
16 and six months from now, they might come in
17 and say I want to pay off the remainder of
18 this by signing this insurance policy to you,
19 which is fine. So, our disclosure that I --
20 my rough draft on ours just says if any or
21 all of this contract is funded by a
22 life-insurance policy, the cancellation of
23 this contract does not cancel the
24 life-insurance policy.

25 MS. EULER: Right. Yeah. And I think

1 that's fine.

2 MS. RUSSELL: Well, that's going to
3 make -- I understand that works good for the
4 trust, but if you're insurance -- Mark, help
5 me out here. If you're insurance and you
6 don't have anything to do with trusts, and
7 you're going to have to now put all those
8 trust revisions in your -- provisions in your
9 contract, plus you're going to have to include
10 joint-account provisions, you're talking
11 taking a one-page contract and it's going to
12 become six pages if you have to make sure you
13 cover everything.

14 MR. OTTO: That's why I was pushing
15 for small type.

16 MR. KRAUS: Yeah. Do you want to
17 change your vote on the font now?

18 MR. REINHARD: We got eight. We got
19 eight.

20 MS. EULER: Again --

21 MS. RUSSELL: I don't see that
22 necessary. I mean --

23 MR. KRAUS: Yeah, I don't either.

24 MR. McCULLOCH: Yeah, but it's the
25 law. It's the law.

1 (Several people talking simultaneously.)

2 MS. EULER: Well, again, one of the
3 things we've talked about doing is that the
4 Board putting together a consumer disclosure
5 sheet, and you hand that out with every
6 contract and you staple it to the contract.

7 UNIDENTIFIED: Yeah. We have talked
8 about that.

9 MS. EULER: I mean, that's one thing
10 we have talked about doing. And when we get
11 to that part, we're going to talk about that.

12 CHAIRMAN: Mark, you had a question?

13 MR. WARREN: Yeah. More language for
14 the contract disclosure sheet, there's an
15 issue of irrevocability of funding to qualify
16 for Medicaid.

17 MS. EULER: Uh-huh.

18 MR. WARREN: And somewhere in there --
19 and this was some language we suggested when
20 the bill was before the legislature that --
21 and I won't read it all here, but we've got
22 some language that would allow the contract
23 to, you know, irrevocably -- the insurance
24 contract transfer the ownership irrevocably so
25 it would qualify -- it would be used as a

1 federally mandated two-step process to protect
2 that person from losing that coverage to fund
3 their funeral. So, I mean, I could give this
4 language to you all, e-mail it over or
5 something, but --

6 MS. EULER: Yeah.

7 MR. WARREN: -- it didn't make it into
8 the final version of the bill, but it's
9 something that's going to -- you know, it's a
10 big problem if there's not a way to deal with
11 it.

12 CHAIRMAN: Okay.

13 MR. WESTBY: I have a question for the
14 chairman and Darlene, as well. We were
15 talking a little while ago about, you know,
16 the Division of Insurance has got something
17 that they come and regulate your contracts.
18 And I just about bet you're never going to
19 write a contract.

20 MS. RUSSELL: No. Not that I -- never
21 said -- (inaudible.)

22 MR. WESTBY: And so, couldn't there be
23 some kind of rule that if you're just selling
24 only insurance and you're doing it by a way
25 the Division of Insurance requires them to do

1 it -- (inaudible.)

2 MS. EULER: It's in here. It's all in
3 here.

4 MR. WESTBY: Well, then, why are we
5 talking about it?

6 MS. EULER: Because if you're selling a
7 preneed contract and selling insurance to fund
8 it, then it falls under 436. But the
9 insurance part of that is regulated by the
10 Department of Insurance -- the Division of
11 Insurance and not us.

12 MR. WESTBY: So, then why is he
13 worried about having to put all these three
14 things in our contracts?

15 MS. EULER: Because the contract is
16 under the authority of this Board.

17 MR. WESTBY: I thought you didn't want
18 to regulate the insurance.

19 MR. OTTO: There's two separate
20 contracts. There's two separate contracts.

21 MS. EULER: Right.

22 MR. OTTO: There's an insurance
23 contract, there's --

24 MR. WESTBY: Well, we're going to have
25 a lot of rules to play with.

1 MS. EULER: Yeah.

2 MR. KRAUS: All right.

3 MS. EULER: Let's move.

4 MR. MOORE: This is John Moore. Can
5 we just make it simple and have a rule that
6 prepaying is illegal?

7 CHAIRMAN: That would be easier.

8 MR. REINHARD: I second that.

9 MR. SPEAKS: Second.

10 MS. EULER: Talk to Representative
11 Meadows about that.

12 REPRESENTATIVE MEADOWS: I hear you.
13 You almost got that, John.

14 CHAIRMAN: Okay. So, quite frankly,
15 I'm totally lost where we're at with it, but --

16 MS. EULER: We are ready to go to
17 comment 15.

18 CHAIRMAN: But you have your thoughts
19 on what we have to do with all that legality
20 stuff?

21 MS. EULER: Yes.

22 MR. KRAUS: We're going to try to
23 address it in rule, if we can, and we'll bring
24 something back to the Board -- hopefully, have
25 something to bring back to the Board.

1 CHAIRMAN: Okay.

2 MR. KRAUS: Not guaranteeing anything.

3 MS. EULER: I will.

4 MR. KRAUS: Sharon will.

5 MS. EULER: I'll guarantee that Earl
6 will have something to bring back to the Board.

7 MR. KRAUS: Something brilliant.

8 CHAIRMAN: Was that 14 or 13; where
9 are we at?

10 MR. KRAUS: We're on 15, I think.

11 MS. EULER: Yeah.

12 CHAIRMAN: So, that one was 14; right?

13 MS. EULER: And we've kind of already
14 talked about 15, and we've kind of talked
15 about 16.

16 CHAIRMAN: We kind of have? We kind
17 of have. Do we need to look at it or not?

18 MS. EULER: That's about similar
19 disclosures.

20 MR. KRAUS: I think so.

21 CHAIRMAN: Anybody have any questions
22 there quickly? Okay. What's the next page?

23 MR. KRAUS: Oh, there's more.

24 MS. EULER: We're moving into it.

25 CHAIRMAN: Then this is where we stop.

1 So, it's 12:00, so here's where we break.

2 We'll all be back at 1:00.

3 (Off the record)

4 CHAIRMAN: Okay. Let's pick it back
5 up where we left off, and we'll keep going
6 from there. But before we do, I hope I will
7 say this correctly: Mark Stahlhuth has joined
8 us from the Department of Insurance. Did I
9 even get close?

10 MR. STAHLHUTH: That was close.

11 CHAIRMAN: All right. Give us the
12 correct.

13 MR. STAHLHUTH: Stahlhuth.

14 CHAIRMAN: Huth. Okay. All right.
15 So, he will be interjecting his thoughts as we
16 go. All right.

17 MS. EULER: And do we want to go back?
18 We had a question for Mark from this morning
19 about single-pay annuities.

20 MR. KRAUS: Yeah. That was on 436.405.

21 MS. EULER: Yeah. Lines 12 through 14.

22 MR. STAHLHUTH: 405.

23 MR. KRAUS: I don't see Mark Warren.
24 He had asked about that.

25 MS. EULER: No. He had a trial at

1 1:30.

2 MR. STALTER: Yeah. I mean, to pick
3 up his issue, but why make a reference to only
4 the single-premium annuities? I mean, you can
5 do multipay or whatever.

6 MS. EULER: Yeah. I don't -- Mark,
7 can you shed any light on that?

8 MR. STAHLHUTH: I think that we -- I
9 think this was something that we had -- that
10 insurance had suggested, that single-premium
11 annuities be the only kind allowed.
12 Otherwise, what you're going to have is
13 multiple payments into annuities, and that's
14 not what anyone expects. I mean, a preneed
15 contract is generally one where you have one
16 payment.

17 MS. EULER: Okay. Are there any rules
18 we need to do to help define that or --

19 MR. STAHLHUTH: I don't think so. I
20 think we know what a single-payment -- a
21 single-premium annuity is.

22 MS. EULER: Okay.

23 MS. RUSSELL: Mark, may I?

24 MR. STAHLHUTH: Yes.

25 MS. RUSSELL: So, you're saying --

1 because we worked on the legislation and
2 Representative Meadows said he had been in
3 contact with the Department of Insurance.
4 Their concern was variable annuities, and we
5 understood that. So, that was excluded and it
6 was fixed annuity was in there, but then the
7 "single" word was inserted. So, are you
8 saying that it was your intention not to allow
9 multiple payments into an annuity, so somebody
10 making a payment plan, so to speak, on a
11 funeral contract, cannot -- can only do it in
12 a lump sum if it's using an annuity?

13 MR. STAHLHUTH: Because, generally
14 speaking, as I recall -- I mean, I'm getting
15 -- I get kind of fuzzy as these issues go by.
16 But as I recall, annuities are, generally
17 speaking, not a very good device for funding
18 preneed funeral contracts. And the only time
19 that you would agree to it would be those
20 cases where you have an insurance company as
21 your funding mechanism and -- but the
22 insurance company won't issue a life-insurance
23 policy because the person won't pass
24 underwriting. So, okay, we'll buy an annuity
25 for him. But, generally speaking, that kind

1 of annuity isn't really going to pay like a
2 regular annuity like you think where you buy
3 an annuity and you would expect it to pay
4 amounts over time, lump sums yearly or
5 monthly. Instead, that sort of an annuity
6 that's being bought because of underwriting
7 concerns on the life-insurance side is likely
8 to result in the beneficiary passing away
9 before there's ever any annuitization, and so,
10 what you would have is a return -- basically,
11 a return of premium with some interest. And
12 so, having a multiple-pay annuity in that
13 situation doesn't sound like it would be
14 appropriate.

15 MS. RUSSELL: A return, plus the
16 interest, is what you get when you do a trust,
17 too. You get a return plus the interest, so
18 it's no different than putting it in a trust.
19 But the Department of Insurance was opposed to
20 flexible payments into an annuity; is that
21 what --

22 MR. STAHLHUTH: Yes. If there's going
23 to be multiple payments, it might as well be
24 to an insurance policy. If they can pass
25 underwriting enough that one would expect them

1 to live long enough to make multiple payments,
2 then they should have a life-insurance policy
3 and not an annuity.

4 MS. EULER: Okay.

5 MR. STALTER: Did I hear you
6 correctly, too, say that one of the concerns
7 is about the variability, as well?

8 MR. STAHLHUTH: I think that was one
9 of the concerns, but I'm not sure exactly. I
10 don't recall specifically what the concern was
11 there.

12 CHAIRMAN: Questions?

13 MS. EULER: Okay. Does that answer
14 everybody's questions?

15 MS. RUSSELL: May I ask one more?

16 CHAIRMAN: Sure.

17 MS. RUSSELL: Would the Department be
18 opposed if it's a single annuity and an
19 individual added to that single annuity if
20 there was one issued -- an annuity issued and
21 then, later on, they came into another \$1,500,
22 spend-down purposes, that they could insert
23 that to that annuity? Would they consider
24 that a payment, also, or would they have to
25 have two annuities then?

1 MR. STAHLHUTH: They would probably
2 have to have two annuities. They'd have to be
3 two single-payment annuities.

4 MS. RUSSELL: Okay.

5 CHAIRMAN: I'll show my ignorance,
6 probably, but why would the Department be
7 against the thought of adding to annuities?

8 MR. STAHLHUTH: I'd have to go back
9 and think, but it might -- it may have to do
10 with the original concern with -- a
11 life-insurance policy is an appropriate
12 vehicle for payments that you expect to
13 receive on death, and an annuity generally is
14 the opposite; it's payments that you expect to
15 receive during your lifetime.

16 CHAIRMAN: Oh, sure.

17 MR. STAHLHUTH: And the only reason to
18 have any kind of an annuity to fund this
19 vehicle would be in the case where you have an
20 insurance company that wouldn't issue the
21 life-insurance policy because it didn't expect
22 -- it couldn't -- the person couldn't pass
23 underwriting standards.

24 CHAIRMAN: Well, sure.

25 MR. STAHLHUTH: So, then they would

1 just take a -- a single-payment annuity then
2 just becomes, in effect, a certificate of
3 deposit.

4 CHAIRMAN: Right. Okay.

5 MR. STALTER: But there's a legitimate
6 purpose for that. What they're trying to
7 achieve, though, is the tax ramifications
8 under 72U for that -- the taxes of annuity,
9 deferring the inside buildup. And so, there
10 are plenty of products out there used for the
11 multiple-pay annuities within the industry.
12 And just like the -- you know, the older
13 insured maybe not qualified for health
14 reasons, but the insurance company will issue
15 an annuity, knowing that we have a maturity
16 age of 90 or so. But, often, it was just to
17 avoid the taxation where a trust would have to
18 report the income, but an annuity, then we are
19 deferring the income aspects until death;
20 okay? So, I don't think there's anything
21 inappropriate about how the annuity is used
22 for that; do you see what I'm saying?

23 MR. STAHLHUTH: We weren't concerned
24 about the tax consequences, we were concerned
25 about the appropriateness of the vehicle to

1 pay for funeral expenses.

2 MR. STALTER: And what aspect would
3 that be? I mean, in terms of -- I know
4 there's a lot of criticism about variable
5 annuities and inappropriate -- (inaudible) --
6 being sold to -- you know, oversold to people
7 in the population. But in this case, I mean,
8 there is a legitimate purpose for an annuity
9 -- a multiple-pay annuity that's part of a
10 preneed contract.

11 MR. STAHLHUTH: I'm not sure that we
12 followed that.

13 MR. STALTER: Well, it has to do with
14 the tax implications of the annuity itself,
15 and the annuity can be held -- (inaudible) --
16 or a trust, and then it gets sent into you,
17 defers the taxation on the inside buildup
18 until the death of the annuitant.

19 MS. EULER: Well, but, I think we need
20 to stay focused on the fact that the law is
21 what the law is. And while there may be
22 arguments that the law be other than what it
23 is, it is what it is. So --

24 MR. STALTER: But here's the point. I
25 think Mark is -- and I don't mean to cut you

1 off, but are we saying then that that's the
2 only kind of annuity that can be used to fund
3 a preneed contract, a single-pay-premium
4 annuity?

5 MS. EULER: That is what the law says.

6 CHAIRMAN: That's what it says.

7 MR. STALTER: Okay.

8 MS. RUSSELL: And, I guess, my
9 clarification on that -- and I understand what
10 the law says, but my clarification was can an
11 insured -- can a company go ahead, if you've
12 got a \$3,000 single annuity and the purchaser
13 comes back with \$1,500, can they issue a new
14 one for \$4,500 instead of having to have two
15 annuities out there and causing the insurance
16 company a lot more trouble? The consumer
17 could eventually have ten of those. If they
18 would reissue that single annuity, as long as
19 it be a single annuity?

20 MR. STAHLHUTH: I think that's
21 probably up to the Funeral Board and its
22 rules, but, off the top of my head, I don't
23 see any problem with that as long as the
24 funeral home would be willing to -- or the
25 seller would be willing to return or cancel

1 the first annuity for the full premium and
2 then purchase another one for -- purchase one
3 annuity for the combined amount.

4 MS. EULER: And that sounds like
5 something we need a rule on.

6 MS. RUSSELL: Yes. Yes. That's what
7 --

8 MS. EULER: So, tell me, the rule
9 needs to say that you can add to an annuity?

10 MS. RUSSELL: As long as it would
11 eventually combine to be one is the word.

12 MR. STAHLHUTH: Or combine to be one
13 or just cancel the first one and then issue a
14 replacement. It would be a replacement.

15 MR. KRAUS: You can replace
16 single-payment annuities?

17 MR. STAHLHUTH: Yes. And that's more
18 appropriate.

19 MS. RUSSELL: Yeah. Combined.
20 Because, otherwise, you would be -- you know,
21 I was just looking at the consumer having ten
22 of these, you know, for small amounts, you
23 know.

24 MR. STAHLHUTH: Yeah.

25 MS. EULER: Okay.

1 MS. RUSSELL: So, you get my
2 understanding, so thank you.

3 MS. EULER: Okay. Okay.

4 CHAIRMAN: All right.

5 MS. EULER: And should we go back to
6 where we were? I think we were on comment 017.

7 MS. DUNN: Please make sure everybody
8 signed in on the sign-in sheet. Connie wanted
9 to make sure I emphasized that because then we
10 have that for our minutes, so --

11 MS. EULER: Do you want to introduce
12 yourself to the group?

13 MS. WARREN: Okay. I'm Ann Warren;
14 I'm here for my husband, Mark Warren. And
15 I've been to these meetings before. I'm with
16 Inglish & Monaco. Hi, everybody. But I won't
17 remember everybody's faces. Now, I do have --
18 Mark did submit comments on everything, so you
19 have that already.

20 MS. DUNN: Yes.

21 MS. WARREN: You don't need to hear
22 from me then if you already know it.

23 MS. EULER: We have the comments, but
24 as we go along, if you want to intersperse if
25 we don't address your issue, you can speak up

1 when we ask you to.

2 MS. WARREN: Okay. And which section
3 did you just cover?

4 MS. EULER: The single-pay annuity,
5 which is in the definitions.

6 MS. WARREN: Okay.

7 MR. STALTER: Don't scare her and
8 think that's how far we got.

9 MS. EULER: Huh? Yeah. 436.405.

10 (Several people talking simultaneously.)

11 MS. WARREN: We're here then? Okay.

12 MS. EULER: And we're now on 436.425,
13 sub 12.

14 MS. WARREN: Okay. Thank you very
15 much.

16 MS. EULER: Uh-huh.

17 MR. KRAUS: All right. So, comment 17,
18 looking for sub 12, I think it's talking about
19 -- it mentions there the seller or an
20 authorized representative whose name should be
21 included who should sign. It was suggested
22 that we may want to clarify who all actually
23 has to sign, I think.

24 MS. EULER: Well, the question, I
25 think, is -- it says seller or authorized

1 representative. So, do we want to -- I don't
2 know if we want to say who its authorized
3 representative would be.

4 MR. KRAUS: I mean, can that be
5 anybody --

6 MS. EULER: And leave that up to the
7 seller.

8 MR. KRAUS: -- anybody they authorize?

9 MS. EULER: Yeah. It could be the
10 seller/agent, it could be the preneed sales
11 agent, it could be --

12 MR. KRAUS: As long as they authorize.

13 MS. EULER: -- a division director.
14 Somebody from the seller needs to sign --
15 somebody with authority.

16 MR. McCULLOCH: It shouldn't be the
17 agent, necessarily, unless they're the same.

18 MS. EULER: But do you think we need
19 to tell a seller who his authorized
20 representatives should be, or leave that up to
21 the seller to --

22 MR. McCULLOCH: I think -- yeah.
23 Leave it up to the seller, but I don't think
24 people are going to let the agent or the
25 counselor do it.

1 MS. EULER: Should we make --

2 MR. McCULLOCH: The counselor has to
3 sign it anyway.

4 MS. EULER: Right. Shall we make a
5 rule that says that the authorized
6 representative should be somebody other than
7 the agent?

8 MR. McCULLOCH: It could be the same,
9 though.

10 MS. EULER: Oh. I thought you just
11 said not.

12 MR. McCULLOCH: No.

13 MS. EULER: Okay.

14 MR. McCULLOCH: I'm just saying -- I
15 was just making the statement, generally, your
16 counselor is not signing on behalf of the
17 seller.

18 MS. EULER: Right.

19 MR. McCULLOCH: Okay. That's all I
20 was trying to say.

21 MS. EULER: Okay.

22 MR. KRAUS: And then that's another
23 consideration, I think, when the Board is
24 looking at this later. Is it necessary to set
25 out in a rule at all with regard to how that

1 person was authorized? Does there have to be
2 anything in writing? Do they just say, okay,
3 I hereby authorize you to sign for me, and,
4 thereby, you're an authorized representative?
5 Or the fact that you're signing the document
6 saying you're an authorized representative --

7 MR. McCULLOCH: I think that's just --

8 MR. KRAUS: -- is that all that's
9 needed?

10 MR. McCULLOCH: This stands on its
11 own, yeah.

12 MR. KRAUS: Okay. So, don't need
13 anything on that.

14 MS. EULER: Comment 18 --

15 MS. BATEMAN: Wait. I'm sorry. The
16 second piece of the comment was some --
17 (inaudible) -- if you are signing, like, she
18 is selling insurance for me, on my behalf,
19 then you're asking for the purchaser, the
20 seller, and the provider?

21 MR. KRAUS: Well, I think it says the
22 seller or its authorized representative.

23 MS. BATEMAN: Right. But it says --

24 MR. KRAUS: So, I think if the seller
25 authorizes a representative to sign on their

1 behalf, then that person's signature would be
2 sufficient.

3 MS. EULER: Right. So, somebody from
4 the seller needs to sign off on the preneed
5 contract.

6 MS. BATEMAN: And the provider?

7 MS. EULER: Yes.

8 MS. BATEMAN: So, the three parties?

9 MS. EULER: Yes. Yes.

10 MR. KRAUS: Yes.

11 MS. BATEMAN: And at what point does
12 the contract take effect, when it's signed by
13 the three parties?

14 MS. EULER: That is a good question.
15 We should do a rule on that.

16 MR. OTTO: Well, I missed -- we
17 couldn't hear over here.

18 MS. EULER: She's asking when the
19 contract takes effect, and does it take effect
20 when all three parties have signed it, or does
21 it take effect when the purchaser signed it,
22 or does it take effect 14 days after somebody
23 signed it? When does the contract take effect?

24 MR. OTTO: Under the current law -- I
25 don't know if we took this out anywhere. The

1 current law indicates that it's when the fully
2 signed contract is delivered to the purchaser.

3 MS. EULER: Right. And I don't
4 believe --

5 MR. OTTO: Did we lose that?

6 MS. EULER: -- that there is anything
7 in the current law that says that.

8 MR. KRAUS: You mean the new law?

9 MS. EULER: Yeah. The new law. See,
10 I've already -- I'm already living in
11 September. So, I think a rule there --

12 MR. KRAUS: Yeah. I don't remember
13 anything like that, either.

14 MS. RUSSELL: Yeah. Because it does
15 reference contract was executed, you know,
16 under -- on line 53 there or 52. So, what is
17 when the contract is executed? Is that the
18 time that all three signatures are on there?

19 MS. EULER: Well, I think that would
20 be very appropriate to do a rule.

21 MR. OTTO: Don Otto. For what it's
22 worth, how our contracts currently state it is
23 it is a nice, big, bold disclosure on there
24 that says this is not a final contract until
25 signed by the seller and returned to the

1 consumer because we don't -- the consumer
2 signs it, the funeral home signs it, then they
3 send it to the trust.

4 MS. EULER: Yeah.

5 MR. OTTO: And then we sign it and
6 send it back directly to the consumer, and so,
7 there's a big thing that says this space is
8 blank right now and it's not a contract till
9 we sign it and get it back to you.

10 MS. EULER: Board, what do you think?
11 Don, what do you think as to when the contract
12 should go into effect?

13 MR. EGGEN: (Inaudible.)

14 MS. EULER: No.

15 MR. McCULLOCH: I think all parties
16 need to have their signature there before it
17 becomes a contract.

18 MS. EULER: So, does it become a
19 contract when all three parties have signed it?

20 MR. McCULLOCH: I would think so.

21 MS. EULER: Okay.

22 MR. McCULLOCH: Just another thing
23 that came up last time, I believe, was if you
24 -- getting the provider to sign it; okay?

25 MS. EULER: Uh-huh.

1 MR. McCULLOCH: If I'm representing
2 someone, is there a way to avoid having to get
3 the provider, because I have an agreement with
4 them, sign, it's sent into the Board, so do I
5 have to get that signature, too, because
6 that's going to be a little bit of a problem.

7 MS. EULER: The provider, again, or his
8 authorized representative.

9 MR. OTTO: You can sign it twice.

10 MS. EULER: The provider can --

11 MR. STALTER: Yeah. Isn't it in your
12 associate agreement? That's how you address
13 it there.

14 MR. McCULLOCH: But what if I'm
15 representing your funeral home?

16 MR. STALTER: Okay. That's it. I
17 mean, your associate agreement where he would
18 then designate you as his authorized
19 representative.

20 MS. EULER: Right.

21 MR. STALTER: As a provider, too.

22 MR. McCULLOCH: But you have to
23 actually have your name on there twice?

24 MR. OTTO: Yeah.

25 MS. EULER: Yes.

1 MR. McCULLOCH: Really?

2 MS. EULER: Yes.

3 UNIDENTIFIED: So, you're the seller
4 and the provider?

5 MR. McCULLOCH: So, you're going to
6 sign on behalf of -- as the provider and the
7 seller?

8 MR. OTTO: I think the more likely
9 double signature will be the preneed agent
10 signing -- the counselor signing both as
11 preneed agent and as authorized representative
12 of the provider will be the one you see
13 duplicated most.

14 (Numerous people answer yeah.)

15 UNIDENTIFIED: Yeah.

16 MR. OTTO: I can see that happening a
17 lot.

18 MS. EULER: Yeah. And that might --
19 that may be the case, but that's --

20 MR. McCULLOCH: Say that again.

21 MR. OTTO: You're going to have a
22 signature block for provider, a signature
23 block for preneed agent. That, I think, in a
24 lot of cases, is going to be the same human
25 being.

1 UNIDENTIFIED: Yeah.

2 MR. McCULLOCH: So, you're saying the
3 funeral home is doing it for themselves?

4 MR. OTTO: Yeah.

5 MR. McCULLOCH: I got you.

6 MR. OTTO: Yeah. Or they're selling
7 through our -- Missouri Funeral Trust and --

8 MR. McCULLOCH: Yeah.

9 MS. EULER: Okay. So, Gary, what do
10 you think? Should the contract go in effect
11 when it's signed by all three?

12 MR. FRAKER: I think so.

13 MS. EULER: And do we want to have a
14 rule that the seller needs to provide a fully
15 executed copy to the purchaser?

16 CHAIRMAN: You just said copy --

17 MR. McCULLOCH: An original or a copy?

18 MR. FRAKER: Copy.

19 MS. EULER: Well, what do you think?

20 MR. McCULLOCH: I mean, we do original
21 now, but --

22 MS. EULER: We can do original.

23 MR. McCULLOCH: But, well, but it may
24 not fit for everybody else. Maybe everybody
25 has a different way of doing it.

1 MR. FRAKER: Generally, we keep the
2 original in the office.

3 MR. McCULLOCH: If you use the copy,
4 you can do either/or, just to make it maybe
5 easy for some folks. I don't know.

6 MS. EULER: Don't

7 MR. OTTO: Well, we use a multipart
8 four -- you know, the old-fashioned IBM
9 xeroxed paper, whatever that is, and we send
10 one of those back with the consumer signed.

11 MS. EULER: Yeah.

12 MR. OTTO: But is that an original or
13 not? I mean, the -- what I would call the
14 original that actually has the ink on it --

15 MS. EULER: It would be the blue-ink
16 page.

17 MR. OTTO: -- we keep in a file for
18 the State Board if it ever wants to come in
19 and see the original original.

20 MS. EULER: Yeah. I don't think --

21 MR. McCULLOCH: Actually, we get two
22 of them signed, now that I think about it.

23 MR. OTTO: Yeah. We don't.

24 MR. McCULLOCH: Yeah. Now that I
25 think about it. We actually have one --

1 MR. ZELL: We keep the original and
2 send them a copy so that it's in the file.

3 MR. KRAUS: And I would think that
4 providing the original, if you decided to do
5 that, would satisfy a requirement for
6 providing a copy.

7 MS. EULER: Uh-huh. Yeah.

8 MR. KRAUS: If you chose to do so.

9 MS. EULER: Or if you want to do it --
10 (inaudible.)

11 CHAIRMAN: So, the word "copy"
12 actually is the applicable thought here?

13 MR. McCULLOCH: So, you can do either?

14 MS. EULER: Yeah.

15 MR. McCULLOCH: Okay.

16 MR. OTTO: I like either.

17 MR. McCULLOCH: Either?

18 MR. OTTO: Either. I always like
19 either.

20 MR. McCULLOCH: Either? That's a good
21 word?

22 MS. EULER: Yes.

23 MR. McCULLOCH: All right.

24 MS. EULER: Okay.

25 CHAIRMAN: Go ahead.

1 MR. KRAUS: Comment 18 -- nothing else
2 on 17; right? On 18, provide the next-of-kin
3 contact for beneficiary, whether that should
4 be included on the contract.

5 MR. OTTO: No.

6 UNIDENTIFIED: It can change. I mean,
7 that's --

8 MS. EULER: Yeah.

9 MR. KRAUS: We have a no.

10 MR. OTTO: Well, Don Otto. First off,
11 the next of kin doesn't control the preneed
12 contract.

13 MS. EULER: Right.

14 MR. OTTO: It's the purchaser that
15 controls the preneed contract.

16 MS. EULER: Well, I think the use of
17 the word "next of kin" there was not the legal
18 term, but what the intent is should you get a
19 contact person for the beneficiary who might
20 be the person making the arrangements at the
21 time or, you know, somebody to contact who
22 might still be alive after the beneficiary is
23 dead. I think that's the thought there.

24 MR. McCULLOCH: It just may not apply
25 is the problem.

1 MR. OTTO: Yeah. Once again, you
2 don't want to confuse the issue of who -- who
3 controls the preneed money is not necessarily
4 the person who controls the final disposition.

5 MS. EULER: Right. And that's not an
6 issue here. The question is: Do you want to
7 have -- when you're doing the contract, do you
8 want the beneficiary to name somebody who is a
9 contact person, somebody who might still be
10 alive, not saying that they're the legal next
11 of kin, but just a contact person as to --

12 MR. McCULLOCH: I'd hate for you to
13 make it a rule, but we do that a lot,
14 obviously.

15 MS. EULER: Well, and that's what I
16 thought.

17 MR. McCULLOCH: But I don't know if
18 I'd like to have it that you have to do it.

19 MR. OTTO: Because the beneficiary may
20 not know that this contract even exists.

21 MR. McCULLOCH: Yeah. They may not
22 want anybody to know about it.

23 MR. OTTO: I mean, the purchaser might
24 buy this for the beneficiary and the
25 beneficiary doesn't even know that the

1 contract has been purchased, so --

2 MS. EULER: Yeah. Well, then they
3 could put themselves down as the contact
4 person.

5 MR. ZELL: What is the purpose of the
6 contact?

7 MR. McCULLOCH: But that doesn't serve
8 any purpose because they're gone.

9 MS. EULER: No. No. No. The
10 beneficiary is the one who -- if Mabel's
11 daughter is buying the preneed contract for
12 Mabel, do you want Mabel's daughter to say,
13 you know, you can contact me for whatever
14 reason?

15 MR. McCULLOCH: But that is who you
16 contact.

17 MS. EULER: Right.

18 MR. McCULLOCH: Because that's who is
19 controlling the contract.

20 MS. EULER: Right. But if -- you
21 know, if Mabel is the purchaser and the
22 beneficiary, do you want the name of her
23 daughter or somebody who simply is a contact
24 person? It's just a thought that was --

25 MR. McCULLOCH: Not that we have to

1 do. I mean, I personally wouldn't want to
2 have to do it --

3 MS. EULER: Uh-huh.

4 MR. McCULLOCH: -- but we certainly
5 can if we want, and it happens a lot.

6 MS. EULER: Okay. Okay.

7 CHAIRMAN: Everybody else agree?

8 (Numerous people agree.)

9 MR. KRAUS: Nineteen. Identify when a
10 contract is guaranteed or nonguaranteed. The
11 suggestion was that to the extent it's both,
12 clearly identify what is not guaranteed.

13 MS. EULER: I think that's a good idea.

14 CHAIRMAN: Yes, Don?

15 MR. OTTO: I think that's a good idea.
16 I might suggest that the rules say that that be
17 identified and on the statement of goods and
18 services. Because, remember, every one of
19 these has to have a statement of goods and
20 services attached. That's the easiest place
21 to identify --

22 MS. EULER: I don't now that we need
23 to tell them where to identify it just as long
24 as it is clearly identified.

25 MR. OTTO: We're talking about a mixed

1 contract now where some things are guaranteed
2 and some things aren't.

3 MS. EULER: Right. Right. But what
4 I'm saying is, I don't think we need to say
5 it needs to be on the statement of goods and
6 services, that -- you know, because I could
7 see somebody doing a one sheet that says this
8 is nonguaranteed, you know, the opening, the
9 closing, the flowers, or whatever, and just
10 attach that. So, I think there might be a
11 variety of different ways that somebody could
12 do that so long as it was -- just so that
13 it's clear.

14 CHAIRMAN: Just as long as it is.

15 MR. FRAKER: There's a lot of those old
16 contracts out there now that people don't --
17 they think they've got them paid for and they
18 don't.

19 MS. EULER: Right.

20 MR. FRAKER: You know, they thought
21 their opening was included, and there's
22 nothing on the contract at all. We see a lot
23 of these things. I'd just like to see on the
24 new stuff clearly marked what's guaranteed,
25 what's there and what isn't, you know. I

1 think it's a good idea to define it.

2 Absolutely.

3 MS. EULER: Okay. Do you agree?

4 CHAIRMAN: But define it as to
5 specifically where on the contract it says
6 that?

7 MR. FRAKER: Well, not specifically
8 where, but it just needs to be on there.
9 They need -- the purchaser needs to know
10 exactly what they bought, you know.

11 CHAIRMAN: I agree with that.

12 MR. FRAKER: And what's frozen and --

13 CHAIRMAN: But your question was -- is
14 specifically where; right?

15 MS. EULER: Don suggested that we
16 require a statement of goods and services, and
17 my comment on that is I don't care -- I don't
18 think it matters where it is so long as it's
19 there and it's clear.

20 MR. FRAKER: I think that Don -- to
21 agree with Don, probably the goods and
22 services is the right place to do it.

23 CHAIRMAN: The easiest, anyway.

24 MR. FRAKER: Because people will look.
25 People look at numbers and handwritten numbers

1 and things there that --

2 MR. McCULLOCH: You can have a
3 guaranteed contract that has nonguaranteed
4 things on there, though.

5 MS. EULER: Right. That's what we're
6 talking about. That if you're going to do
7 that, that you need to clearly identify which
8 things are nonguaranteed.

9 MR. McCULLOCH: We do.

10 MS. EULER: Yeah.

11 MR. OTTO: They'll be in Helvetica
12 Bold while the others are in New Times Roman.

13 UNIDENTIFIED: In a five.

14 MS. EULER: Don't forget Sans Serif.

15 MS. RUSSELL: Are you saying -- the
16 way I understood the law that you have either
17 it's a guaranteed contract or it's a
18 nonguaranteed contract. What you're saying,
19 you can have a mix of both?

20 MS. EULER: Yes. Yes. Certain things
21 are guaranteed, some things are not.

22 MS. RUSSELL: Well, I understand on
23 the cash advances, but you're actually saying
24 merchandise. So, when you're going to do
25 audits and stuff, this is how you guys

1 interpret that? Okay.

2 MS. EULER: Yeah. I think you could
3 do -- (inaudible.) Don't you agree, Board?

4 MR. FRAKER: Sure. Absolutely.

5 MR. REINHARD: Maybe you could have
6 little boxes on the contract in certain sized
7 letters that says guaranteed, partially
8 guaranteed, or fully guaranteed.

9 UNIDENTIFIED: Check. Check. Check.

10 MS. DUNN: What would you do --

11 (Several people talking simultaneously.)

12 CHAIRMAN: I could see a mixed
13 contract where -- or I could see a contract
14 where, okay, family comes in, and let's just
15 say they have \$4,000 and they say I want you
16 to freeze my service charge.

17 MS. EULER: (Inaudible.) Uh-huh.

18 CHAIRMAN: I have enough to pay for
19 that, but I don't have enough to buy
20 merchandise. So, you're going to say on your
21 contract that I froze this, but I didn't
22 freeze this?

23 MS. EULER: Uh-huh.

24 MR. McCULLOCH: That's what we do.

25 CHAIRMAN: You do that?

1 MR. McCULLOCH: But we don't usually
2 get it -- break it into merchandise and
3 services. It's just really those cash-advance
4 items that you don't include, typically

5 MR. SPEAKS: That is the best example
6 right there.

7 (Several people talking simultaneously.)

8 MR. McCULLOCH: (Inaudible) -- 99
9 percent of the time, but you could have that
10 problem, though.

11 CHAIRMAN: Well, I'm seeing an open
12 end here where you're saying one document can
13 do all of that?

14 MS. EULER: Yeah.

15 MR. FRAKER: Yeah.

16 MS. RUSSELL: I don't think so.

17 MR. McCULLOCH: It's real clear. It's
18 easy if you can read. If you can't read,
19 you've got a problem.

20 MR. REINHARD: He's got a document.
21 Get your document out. Show them where the
22 cash advance is on there.

23 MR. McCULLOCH: I'm sure you guys have
24 plenty of them in here somewhere.

25 (Several people talking simultaneously.)

1 MR. REINHARD: Why can't you get it
2 all on one contract? He's got -- he's got a
3 perfect example of it.

4 MS. RUSSELL: I'm talking about
5 audits. I mean, the cash-advance items are
6 clear. I mean, that's always separate. I
7 mean, every contract I've ever seen and all of
8 yours probably say the same, cash-advance
9 items are not frozen. You put it on your
10 statement of goods and everything else. But
11 when you start talking about the audit process
12 or the exam process, you're going to have your
13 auditors looking -- I always understood it to
14 be you have a guaranteed contract. The
15 consumer knows this is guaranteed. You have a
16 nonguaranteed contract. All the proceeds are
17 going to apply at time of need. Now, all of
18 a sudden, you've got a third type of a
19 contract that can be mixed; okay? These
20 services are guaranteed. The person is paying
21 -- making this contract at one time. You're
22 saying, okay, I'm going to guarantee these
23 services and freeze it, but I'm not going to
24 freeze your casket. It's a mix, so how in
25 the world are your examiners and auditors

1 going to -- I mean, they're going to have to
2 pick those things apart to make sure that --

3 MR. STALTER: I'm not sure I
4 understand the issue. An audit -- I mean,
5 they'll come in -- are the payments going into
6 the trust?

7 MR. SPEAKS: They just want to know if
8 the money is there.

9 MS. RUSSELL: They will also audit the
10 at-need part of it when they look to see on
11 the fulfillment of the contracts, is what I'm
12 talking about.

13 MR. STALTER: Okay. That part -- okay.
14 That's different.

15 MS. RUSSELL: That's what I'm talking
16 about. I'm not talking about the actual money
17 part, I'm talking about the fulfillment of the
18 contract, so I should have made that clear.

19 MS. EULER: Still, I don't see that as
20 a huge problem.

21 MS. RUSSELL: Okay. The next
22 contract, it is.

23 MR. McCULLOCH: The family is going to
24 audit that on the fulfillment side.

25 (Several people talking simultaneously.)

1 MR. REINHARD: Yeah. I don't think the
2 auditor needs to be looking at the service
3 contract.

4 CHAIRMAN: Actually, the bigger issue
5 will be for the family that said I was sure
6 it was all frozen.

7 MS. RUSSELL: Yeah.

8 CHAIRMAN: You're telling me now it's
9 not.

10 MR. SPEAKS: Mama told me it was all
11 taken care of.

12 MR. OTTO: Which is why I suggest,
13 even if it's not required by rule, that it be
14 on the statement of goods and services,
15 because that's a separate sheet of paper and
16 the family brings that one in, and if you
17 don't have it on the statement of goods and
18 services, this one was guaranteed, this one
19 wasn't, then you're going to have confusion.
20 I know on ours, unless you prohibit it, we're
21 going to put it on the statement of goods and
22 services that says I'm guaranteeing my
23 standard service charge. I'm not guaranteeing
24 you what the casket price -- you know, we're
25 putting three grand away for a casket, but

1 we're not guaranteeing what it is or whatever
2 -- nice big box to check.

3 MR. McCULLOCH: So, in the preneed
4 trust, that's where you're saying you guys do
5 it? You have it right there?

6 MR. OTTO: We'll put it on the
7 statement of goods and services. We call it
8 our Exhibit #A or whatever.

9 MR. McCULLOCH: Okay.

10 MR. OTTO: It'll be right there in each
11 section, is this guaranteed price or is this
12 not a guaranteed price on each of these blocks.

13 MS. EULER: And I think there are --
14 well, I think there are a variety of different
15 ways people can do things, and all of them are
16 acceptable.

17 MR. McCULLOCH: Yeah. Because we have
18 a section that's contingency items and
19 nonfrozen, and we list all of those there.
20 And then when you come down and you add up
21 section one and two, and it says right there
22 nonfrozen items and anything that falls into
23 that category goes there, something like that.
24 That works, I guess?

25 MS. EULER: Uh-huh. Yeah.

1 MR. McCULLOCH: I guess I have to
2 change the names now though; right -- the
3 headings, I assume?

4 MS. EULER: Yes. Yeah.

5 MR. McCULLOCH: I like mine better,
6 though.

7 MS. EULER: Well, you can just keep
8 them that way and we'll visit with you.

9 MR. McCULLOCH: Oh, yeah. I know.
10 That's the problem.

11 MS. EULER: We'll have that
12 opportunity --

13 MR. McCULLOCH: I've been getting
14 visited a lot lately.

15 CHAIRMAN: Okay. So, that's just good
16 as it is on 19?

17 MS. RUSSELL: I just had one other
18 question. On 13 there, that it properly
19 identify whether the contract is guaranteed or
20 nonguaranteed. So, what you're saying, even
21 if on Don's idea of having it on his Exhibit
22 #A, it would still -- the contract would still
23 have to say, unless that's a part of the
24 contract, it would be okay, unless they make
25 sure and specify that it's a part of the

1 contract.

2 MS. EULER: Yes. Right. Right.

3 MS. RUSSELL: All right. Just double-
4 checking. Sorry.

5 CHAIRMAN: No, that's fine.

6 MS. EULER: That's okay.

7 MR. KRAUS: We are doing a rule on 19?

8 MS. EULER: We are doing a rule.

9 MR. KRAUS: Okay. That's what I had.
10 Twenty. I guess that's defining what
11 prominently identify is. Any interest in
12 that? We're going to get back into fonts
13 again, but I think that's kind of what it's
14 talking about.

15 MS. EULER: I think --

16 CHAIRMAN: You're on 20; right?

17 MR. KRAUS: Yes.

18 MS. EULER: I think we covered that in
19 the rule regarding 19 and, you know, that you
20 have to clearly identify --

21 MR. KRAUS: I think so, too.

22 CHAIRMAN: Any comments?

23 MR. McCULLOCH: I agree.

24 CHAIRMAN: I hear I agree. Move on.

25 MR. KRAUS: All right. Twenty-one.

1 Need to address by addendum in any situation
2 that's pointing to applicable and consumer
3 disclosures required by the Board.

4 MS. EULER: Right. And that's what we
5 talked about earlier.

6 MR. KRAUS: About putting together a --

7 MS. EULER: A consumer disclosure
8 sheet.

9 MR. KRAUS: -- disclosure sheet?

10 MS. EULER: Right.

11 MS. RUSSELL: So, are you saying,
12 Sharon, on that one, you guys are going to do
13 a rule as to what the disclosures will say?

14 MS. EULER: Yeah.

15 MS. RUSSELL: Okay. Thank you.

16 MS. EULER: We talked -- at least
17 that's what we're talking about right now is
18 doing a form.

19 MS. RUSSELL: Form. Okay.

20 CHAIRMAN: Everybody agree with that?

21 MS. EULER: That way, everybody won't
22 have to retype the same stuff.

23 MS. RUSSELL: Yeah. Thank you.

24 MS. EULER: We will print it on paper
25 or something.

1 MR. REINHARD: And you're going to
2 distribute it?

3 MS. EULER: No, you are; you're the
4 Board.

5 MR. REINHARD: The Board. But, I
6 mean, you're actually going to sign off on
7 something?

8 MS. EULER: For the consumer
9 disclosures because --

10 MR. KRAUS: It's going to have
11 "approved by Sharon" at the bottom.

12 MS. EULER: Yeah. There are several
13 places where it says "the included disclosures
14 the Board so designates by rule," so, yes.

15 CHAIRMAN: All okay? Okay.

16 MR. REINHARD: That's great.

17 MR. KRAUS: All right. Twenty-two.
18 Decide what these would be, if any, and set
19 out in rule, maybe. It's a binding contract,
20 have a right to have it reviewed by an
21 attorney. Notice of State Board complaint
22 process which are more disclosures that may or
23 may -- could or could not be included in the
24 disclosure sheet, I presume.

25 MS. EULER: Yeah.

1 MR. KRAUS: So, we'll hook that in
2 with that one.

3 CHAIRMAN: Is everybody okay with
4 that? Okay.

5 MR. KRAUS: Twenty-three. Could be
6 more specific than this in rule of one, two.
7 Maybe provide acceptable language by rule or
8 by form. That's another disclosure, so that's
9 the same thing. Hook that in, too.
10 Twenty-four, the average funeral around
11 \$8,000. The small-claims court would have
12 competent jurisdiction and, thus, could
13 determine compliance with 436 and/or 333. I
14 think that's going towards defining further
15 what court of competent jurisdiction is. And
16 whether we need to do that by rule or not, I
17 don't know if we do.

18 MS. EULER: No. We can't tell the
19 courts what they're --

20 MR. KRAUS: They're going to decide
21 their own jurisdiction.

22 MS. EULER: They're going to decide
23 their own jurisdiction. Right.

24 MR. KRAUS: Are there any other
25 thoughts on that?

1 CHAIRMAN: Comment?

2 MS. WARREN: Oh. I hear -- well,
3 small-claims court's jurisdiction is \$3,000.
4 I just thought I'd throw that out there. If
5 you have \$8,000, it wouldn't be small claims.

6 MR. STALTER: I think it depends on
7 district to district. Some of them are higher
8 or lower. But the issue here is that we just
9 granted detention. You know, we've always had
10 this precontract. It wasn't in compliance
11 with 436, and it could be rendered void. And
12 this is just trying to flesh that out a little
13 bit that when we talk about court of competent
14 jurisdiction, in some of those counties, it
15 will be a small claims.

16 MS. EULER: That's okay. The -- and
17 the only -- this doesn't -- this only says is
18 this a valid contract or not. That's what the
19 court would decide in this, you know, is this
20 contract void or not. And I don't care what
21 court does it.

22 MR. KRAUS: Well, and isn't it right
23 that all -- anything in small claims can
24 ultimately go to circuit court?

25 MS. EULER: Uh-huh. Uh-huh.

1 MR. KRAUS: As, like, an appeal or, I
2 guess, a do-over, really?

3 MR. STAHLHUTH: Yeah. It's a do-over.

4 MS. EULER: Yeah. Because this isn't
5 -- it isn't really a claim for money, it's a
6 court decide whether this contract is void or
7 not.

8 MR. STALTER: Well, the court is
9 determining whether it applies to 436 or not.

10 MS. EULER: No.

11 MR. STALTER: No. You're saying --

12 MS. EULER: The preneed contract shall
13 be voidable and -- okay. You're right.
14 Voidable and unenforceable if the court of
15 competent jurisdiction decides this contract
16 is not in compliance with this section when
17 not issued by a seller. So, the intent of
18 that section was to allow the consumer to
19 determine -- or a provider or a seller even --
20 that the determination of whether a contract
21 is void would have to be made by a court, it
22 couldn't just be decided by the provider or
23 the seller or the consumer. Don?

24 MR. OTTO: We do need a rule on this,
25 though, with that next sentence. And I lost

1 this battle with Charlie over at the Capitol
2 because sentence one and sentence two in that
3 paragraph are very confusing. Because the
4 first sentence says the preneed contract shall
5 be voidable under -- and, of course, at the
6 option of the purchaser, but you have to have
7 a court of competent jurisdiction say that it
8 violates the law. Then on the second sentence
9 says upon exercising the option by written
10 notice to the seller and provider. So, to
11 make it clear, I think it would be helpful if
12 there were a rule that says here is the steps
13 to void a contract.

14 MS. EULER: Okay.

15 MR. OTTO: One --

16 MS. EULER: You have to file.

17 MR. OTTO: -- you've got to have a
18 court order -- a court for competent
19 jurisdiction say that it violated 333 or 436;
20 two, you send written notice --

21 MR. KRAUS: Right. Which makes it
22 voidable.

23 MR. OTTO: Yeah.

24 MR. KRAUS: It doesn't mean it is
25 void, it can be voided.

1 MR. OTTO: Yeah. It just -- yeah.

2 MR. KRAUS: And then --

3 MR. OTTO: Step two, then you send
4 written notice; step three, the -- you know --

5 MS. EULER: Okay.

6 MR. OTTO: -- the seller returns all
7 the money paid or something like that within X
8 number of days, because it doesn't say number
9 of days on this section, I don't think. But
10 I don't want it -- because of the way this is
11 worded and it's not worded great, I want it --
12 it would be nice on our end if it were clear
13 that if the consumer wants to void a contract
14 under this clause, he's got to go to court
15 first, get a court order, a ruling, a final
16 judgment saying it's voidable, then send
17 written notice of his option to exercise that
18 to the seller.

19 MS. EULER: Okay. That's what I think.

20 CHAIRMAN: All agree; correct?

21 Correct.

22 MR. KRAUS: All right. Twenty-five.
23 Now, let's see. Is that the same? It looks
24 like that one is cut off at the end somehow.
25 If the contract is voided by the purchaser for

1 noncompliance, the purchaser is entitled to
2 the entire trust or joint account.

3 MS. EULER: And that's showing what --
4 that the -- not just the payments made, but
5 also any income that's in the account.

6 MR. KRAUS: Do we need to say that in
7 the rule?

8 MS. EULER: Huh?

9 MR. KRAUS: Do we need to say that in
10 the rule?

11 MS. EULER: Well, I think we can say
12 that when it says all payments, that includes
13 not only consumer payments, but any income
14 payments, as well. So, I think that's a good
15 idea.

16 CHAIRMAN: Any disagreement?

17 MR. SPEAKS: What about -- Brad
18 Speaks. What about the 5-percent so-called
19 origination fee?

20 MS. EULER: That's a good point, Brad.

21 MR. ZELL: What about the \$52 for the
22 premium contract -- \$45, \$52, whatever it is?

23 MR. REINHARD: You're thinking about
24 \$152.

25 MR. ZELL: \$152?

1 MS. EULER: Just for you.

2 MR. ZELL: How about that?

3 MS. EULER: Brad's are going to be
4 \$300, yours are going to be \$152.

5 MR. STALTER: (Inaudible.)

6 MS. EULER: He's pointing at me. So,
7 that's a good point, too. What does the Board
8 think?

9 CHAIRMAN: Well, this is all under
10 noncompliance, so --

11 MS. RUSSELL: Noncompliance, yeah.

12 CHAIRMAN: That's not just a regular
13 deal.

14 MS. EULER: It should be. I think --
15 do you want to know what I think?

16 CHAIRMAN: Yes.

17 MS. EULER: Do you want to hear what I
18 think? I think that any fees paid to the
19 State Board, the -- I think that if the
20 contract is determined to be void, that the
21 consumer should get all their money back. And
22 if that means that the seller is on the hoof
23 for 5 percent, and on the hoof for whatever
24 fees they have to pay the State Board, that's
25 their penalty.

1 MR. KRAUS: Because all of the fees are
2 pursuant to contract.

3 MS. EULER: Yeah.

4 MS. RUSSELL: As the current law it
5 has right now, you have to pay 10 percent per
6 annum, you know.

7 MS. EULER: Yeah. Right.

8 MS. RUSSELL: So, this is really
9 easier than what the current law is. You're
10 getting off easier.

11 MS. EULER: Right.

12 CHAIRMAN: True. All agree?

13 MR. KRAUS: That makes sense to me.

14 MS. EULER: I mean, I think the
15 customer should be made whole.

16 MR. WESTBY: Sharon, do you think that
17 would be right to do that? You're going to
18 keep that -- give it all back to them?

19 MS. EULER: If the contract is void.

20 MR. WESTBY: But the purchasers don't
21 cancel; right?

22 MS. EULER: If a court -- upon a court
23 order.

24 MR. OTTO: This is not just if the
25 consumer changes their mind.

1 MR. McCULLOCH: Just not regular
2 cancellation, yeah.

3 (Several people taking simultaneously.)

4 MR. KRAUS: This isn't cancellation.

5 MR. McCULLOCH: This is if you didn't
6 comply.

7 MS. EULER: This is not a
8 run-of-the-mill thing. This is where somebody
9 did something wrong.

10 MR. SPEAKS: But, essentially, you're
11 saying that's their penalty?

12 MS. EULER: Yeah.

13 MR. SPEAKS: In regard --

14 MR. OTTO: Arguably -- the argument
15 would go the audit fee or whatever we want to
16 call that is not a contract payment, that's a
17 statutory payment, arguably. So, I think
18 there should be, probably, a rule on whether
19 or not the consumer gets that back.

20 MS. EULER: But it's a contract
21 payment owed by the seller, not the consumer.

22 MR. OTTO: But they can pass that on
23 to the consumer.

24 MS. EULER: Yeah. They can pass it on
25 to the consumer, but as far as the consumer is

1 concerned, that's just part of the cost of the
2 preneed.

3 MR. OTTO: But will the seller get
4 that \$152 back?

5 MS. EULER: I think the seller eats
6 that.

7 MR. OTTO: If the contract is void, so
8 if it's void, it never happened.

9 MS. EULER: Uh-huh.

10 MR. OTTO: And if --

11 UNIDENTIFIED: It's never owed.

12 MR. OTTO: If the seller -- yeah. If
13 the seller has got to pay to the consumer the
14 audit fee back as part of a void contract, and
15 that audit fee has already been sent to the
16 State of Missouri, I think the State of
17 Missouri should return that back to the seller.

18 UNIDENTIFIED: Or a credit for it.

19 MR. KRAUS: Well, but this talks about
20 what the purchaser is entitled to, not what
21 the seller is entitled to.

22 MS. EULER: Right.

23 MR. OTTO: I know. But I'm just
24 saying that's why I think we -- to do this, I
25 think we would need a rule, but --

1 MS. EULER: With the State, we don't
2 refund.

3 MS. DUNN: We have to clear that with
4 the State auditor.

5 MS. EULER: Yeah.

6 MR. ZELL: But in this court, aren't
7 they going to be requiring information from
8 the Board for licensing -- (inaudible.) So,
9 aren't you --

10 MS. EULER: Depends on what the
11 lawyers do.

12 MR. STALTER: I'm sorry? What?

13 MR. ZELL: Is that an interest -- your
14 conflict of interest that you're going to tell
15 someone if they don't have a license, that
16 we're not -- but we did get their money. I
17 don't know if the court is going to do
18 something --

19 MS. EULER: In that situation --

20 MR. ZELL: I know it's only 50 bucks,
21 but --

22 MS. EULER: -- if they don't have a
23 license, they're not going to be paying us
24 their money -- at least, I can't imagine
25 anybody voluntarily paying us money if they

1 don't have a license because we wouldn't know
2 what to do with it.

3 MR. ZELL: You'd find something --
4 (inaudible.)

5 MS. EULER: Yeah.

6 MR. OTTO: I mean, to me, it's no
7 different than -- and I hate to bring this up
8 -- sales tax that has been improperly charged.

9 MS. EULER: And there is a big move
10 and there has been a movement for some time to
11 not allow that to go back to the payor because
12 it's a windfall when it wasn't their money to
13 start with.

14 MR. OTTO: But if you're saying that
15 the -- I'll just make it real easy. There's
16 a \$10,000 contract, \$50 audit fee; okay? And
17 it's determined to be voidable, so the funeral
18 home has to pay the consumer \$10,050.

19 MS. EULER: Uh-huh.

20 MR. OTTO: And the consumer has then
21 -- the funeral home has already sent his \$50
22 up to the State.

23 MS. EULER: Uh-huh.

24 MR. OTTO: Now, the consumer -- the
25 funeral home is out that money.

1 MS. EULER: Uh-huh.

2 MR. OTTO: And the State has gotten a
3 windfall. The State has gotten a windfall
4 because if it's a void -- if the contract is
5 void, it's never happened.

6 MS. EULER: And the problem with that
7 --

8 MR. OTTO: Is that's -- yeah. That's
9 --

10 MS. EULER: Because this doesn't talk
11 about the sellers.

12 MR. OTTO: Patrick Henry brought that
13 up, yeah.

14 MS. EULER: This talks about what the
15 purchaser is entitled to.

16 MR. KRAUS: Well, has the State really
17 gotten a windfall? I mean, isn't the purpose
18 of that payment to help the State pay for
19 tracking those contracts, for regulating those
20 licensees --

21 MR. OTTO: Well, that's fine. Then the
22 consumer doesn't get the money back, then the
23 consumer shouldn't get the money back.

24 MR. KRAUS: -- and they still have to
25 do that even for contracts that are later

1 voided.

2 MR. STALTER: Well, let's say that you
3 paid a \$50 audit fee. Part of it is that
4 you're going to review these things, and you
5 didn't catch that this contract was voidable,
6 too?

7 MR. OTTO: Yeah. The court had, yeah.

8 MR. KRAUS: Maybe the Board did, but
9 what action do they take? It's for the person
10 to pursue getting it voided.

11 (Several people talking simultaneously.)

12 MS. EULER: Or maybe the Board doesn't
13 have enough knowledge to know whether it's
14 void or not because the Board doesn't know
15 that Mabel's daughter took her checkbook and
16 illegally forged her name to it.

17 MR. STALTER: That wouldn't be the --
18 we're talking about the contract form being in
19 compliance.

20 MR. SPEAKS: That doesn't happen.

21 MR. STALTER: We're talking about a
22 contract form being in compliance with 436.

23 MS. EULER: Okay. You're right. But,
24 again, the Board may not have the information.
25 This is not going to come into play very

1 often. I mean, I can't -- there have been a
2 few cases we've had where the Board has been
3 asked to look at a contract to determine
4 whether it's void.

5 MR. STALTER: Let's talk about old law
6 and new law. Old law, yeah, I agree.

7 MS. EULER: Under -- in the last eight
8 years.

9 MR. STALTER: Let's look -- going
10 forward, though, it's a different story.

11 MS. EULER: Well, yeah, I know. But
12 I'm just saying that I think we're giving this
13 -- I mean, it's worth talking about, but I
14 think the time -- number of times this is
15 going to come into play is going to be minimal.

16 MR. OTTO: I would still go back to the
17 argument I don't think the audit fee is a
18 payment under the contract.

19 MS. EULER: That's right.

20 MR. OTTO: And so, I don't think the
21 funeral home has to refund that audit fee to
22 the consumer.

23 MS. EULER: Well --

24 MR. OTTO: Because that is a statutory
25 required fee, that's not a fee on the contract.

1 MS. EULER: But the seller is not
2 statutorily required to charge the consumer
3 that fee. The seller chooses to charge the
4 consumer that fee as part of the contract, so
5 it is a contract payment.

6 MR. KRAUS: Yeah. If they make it a
7 part of the contract fee, it is.

8 MS. EULER: Uh-huh. Uh-huh.

9 MR. STALTER: But that's not really an
10 emergency issue right now.

11 MS. EULER: No.

12 MR. KRAUS: No, it's not. And if the
13 ultimate question for the Board is whether the
14 Board wants to refund that fee to the seller
15 or not, then, I mean, the Board can decide
16 whether they want to.

17 CHAIRMAN: And you have asked the
18 question. Mr. Board Member, do you want to
19 refund the fee? Do you want to refund the fee?

20 MR. McCULLOCH: Certainly not.

21 CHAIRMAN: Do you want to refund the
22 fee?

23 MR. REINHARD: Yeah. Because the
24 contract is screwed up. I mean, if they wrote
25 a contract, that's why I'm going to Bill and

1 get his contracts so I can use them and then
2 he can go to jail.

3 MS. EULER: The lawyer never goes to
4 jail.

5 UNIDENTIFIED: Well, we don't know
6 about that.

7 (Several people talking simultaneously.)

8 MS. WARREN: I have a legal question.

9 MR. REINHARD: If you've written a
10 contract that's not under accordance of the
11 statute, and you've sold that, why wouldn't --
12 what's wrong with a penalty of \$50? Big deal.
13 You better be glad to pay it and get the hell
14 on out of Dodge, but you've already overruled
15 it, so we go -- this is a consumer board, boys.

16 MS. WARREN: This is kind of a legal
17 observation. It's not pro or one side or the
18 other, but it's a reality comment. In
19 litigation in the real world, a judge is going
20 to make a determination and has a choice the
21 way the statute is written to declare it void
22 as of today or void ab initio, but then the
23 -- which means from the very beginning date.

24 MR. REINHARD: Thank you. She's
25 talking a foreign language.

1 MS. WARREN: All payments made under
2 this contract shall be recoverable. That
3 gives the court the option to make the
4 determination at the court's discretion
5 whether or not to order a full refund or not,
6 so there's no cookie-cutter set of facts.
7 Everybody hires their own lawyers. You do
8 your best job arguing before the court, unless
9 you're stuck in small-claims court where there
10 are no lawyers.

11 UNIDENTIFIED: That's right.

12 MS. WARREN: That's the reality.

13 MS. EULER: Yeah.

14 CHAIRMAN: So, all of that is just
15 fine, so let's go.

16 MR. REINHARD: Turn that piece of
17 paper into these folks.

18 MS. WARREN: No. That came out of my
19 head.

20 MR. REINHARD: Oh, okay.

21 MS. WARREN: It's not written down
22 anywhere.

23 MR. REINHARD: Oh, I thought you were
24 --

25 MS. WARREN: And I was worried I was

1 going to get in trouble with Mark for saying
2 something that was outside of -- but that's
3 just the reality of it. I mean, it's written
4 perfectly for both sides --

5 MR. REINHARD: Good point.

6 MS. WARREN: -- to advocate.

7 MR. REINHARD: That's what they do.

8 MS. WARREN: Yeah. So, go to court and
9 decide, so if -- because it doesn't say ab
10 initio. It's voidable. And in whatever
11 manner the judge chooses to do it. You just
12 argue your best case. And if the court
13 decides to order the Board to refund a fee,
14 the Board has a right for the opportunity to
15 be heard and respond and say this is the
16 reason why we should not. Now, Mark is
17 shaking his head no.

18 MR. STAHLHUTH: Because the Board is
19 not a party to this suit.

20 MS. WARREN: Well, the Board --

21 MS. EULER: It says all payments made
22 under such contract shall be recoverable by
23 the purchaser from the contract seller,
24 trustee, or other payee.

25 MR. STAHLHUTH: So, those are the only

1 two parties.

2 MS. WARREN: Or other payee.

3 MR. McCULLOCH: Is that considered a
4 payment?

5 MS. WARREN: Yeah. Realistically, it
6 could be.

7 MR. OTTO: It's not worth spending
8 another 20 minutes on today.

9 MS. EULER: Yeah. No, it's not.

10 MR. OTTO: It's not an emergency rule.

11 MR. REINHARD: Okay. Thank you, Don.

12 MS. WARREN: It's just an observation.

13 MR. McCULLOCH: So, we're going to
14 table that?

15 MS. WARREN: Real world.

16 MS. EULER: I think we're just going
17 to let it go.

18 MR. REINHARD: You wait till I get my
19 buddy back in here from vacation.

20 MR. McCULLOCH: There you go.

21 MR. KRAUS: Twenty-six. Do a rule on
22 public assistance. May want to contact MO
23 HealthNet to collaborate. I think that's
24 referring to the Chapter 208 there.

25 MS. EULER: Yes.

1 MR. KRAUS: Do you see us doing any
2 kind of emergency rule on that?

3 MS. EULER: Mark had a comment on
4 that. Ann, are you prepared to speak to
5 Mark's comment on that?

6 MS. WARREN: I'm looking for it. I
7 just --

8 MS. EULER: It's on the bottom of the
9 first page. I think it would be worth
10 checking with MO HealthNet to see if there's
11 anything we need to do rulewise to make this
12 more workable for folks.

13 CHAIRMAN: So, do you all agree she
14 needs to do that?

15 MR. KRAUS: For a regular rule.

16 CHAIRMAN: For that?

17 MS. EULER: Or he needs to do that.

18 MR. KRAUS: Someone in staff needs to
19 do that.

20 CHAIRMAN: They. They.

21 MS. EULER: It needs to be done.

22 CHAIRMAN: Didn't like "she" in there,
23 huh?

24 MR. REINHARD: Eventually. Eventually.

25 MR. KRAUS: It will be done.

1 CHAIRMAN: Everybody said yes; right?

2 MR. KRAUS: The royal we.

3 MS. WARREN: And, Sharon, to make sure
4 I'm on the same page, this is under 436. --

5 MS. EULER: 425.

6 MS. WARREN: -- 053, irrevocability of
7 funding to qualify for governmental benefits;
8 i.e., Medicaid?

9 MS. EULER: Yeah. Yeah. Yeah.

10 MS. WARREN: Our comment is need to
11 allow the policy owner to meet the
12 qualifications of DHS by making the
13 life-insurance policy irrevocable, not the
14 preneed contract.

15 MS. EULER: Right.

16 MS. WARREN: Current language does not
17 do this.

18 MS. EULER: I think it does, but it's
19 not real clear.

20 MS. WARREN: Okay.

21 MS. EULER: Which is why I think it
22 would be helpful to contact MO HealthNet and
23 get their input to make sure that what we're
24 telling people will qualify people for
25 Medicaid.

1 MS. WARREN: Okay.

2 MR. KRAUS: All right. Twenty-eight.
3 Let's see. Irrevocable waiver. Do you want
4 to come up with some acceptable language for
5 that either in a form or a rule?

6 MS. EULER: No.

7 MR. KRAUS: No?

8 MS. EULER: Unless Medicaid -- MO
9 HealthNet has something for us.

10 MR. McCULLOCH: We've stayed away from
11 that in the past.

12 MS. EULER: Yeah.

13 MR. McCULLOCH: Kind of let everybody
14 do their own little thing with it.

15 MS. EULER: Yeah. Because we want
16 Bill to be able to eat.

17 MR. McCULLOCH: Exactly.

18 MR. STALTER: I wasn't paying
19 attention. What did I disagree to do?

20 MR. REINHARD: You're going to eat
21 damn good after this.

22 MS. EULER: We don't --

23 MR. McCULLOCH: Just say yes.

24 MR. REINHARD: Because they're going
25 to follow you.

1 MR. KRAUS: You just got more business.

2 MS. EULER: Yeah. We want the private
3 lawyers out there to have the opportunity to
4 draft the waiver forms for their funeral-home
5 clients.

6 MR. STALTER: Okay. Do I get to
7 charge for that?

8 MS. EULER: If you can get them to pay
9 for it.

10 CHAIRMAN: No.

11 (Several people talking simultaneously.)

12 MR. REINHARD: Well, you're going to
13 get a new car, you get a new house.

14 MR. OTTO: But you're subject to
15 refund on that, you know.

16 MR. KRAUS: We're putting in the rule
17 that that's for free, so --

18 MS. EULER: Yeah. These forms may be
19 obtained free of charge from Stalter Legal
20 Services and Inglish & Monaco.

21 MR. McCULLOCH: Martin, say yes.

22 CHAIRMAN: Yes. Yes.

23 UNIDENTIFIED: What you really need --

24 MS. EULER: Under equal opportunity.

25 (Several people talking simultaneously.)

1 MR. WESTBY: Sharon, what you needed
2 to do is write a form to replace all the
3 other forms; correct?

4 UNIDENTIFIED: One form.

5 UNIDENTIFIED: One form.

6 MS. EULER: The form of all forms.

7 UNIDENTIFIED: An irrevocable form.

8 MR. KRAUS: Twenty-nine. The right to
9 cancel or rescind.

10 CHAIRMAN: Basically, just let it be.

11 MR. KRAUS: Expose the sellers to a
12 risk of having to return all payments,
13 purchaser can rescind its contract. It's as
14 though the contract has been voided and the
15 seller must return everything, even
16 origination fee. I'm not really sure where
17 that comment is going.

18 MR. STALTER: Well, it's the
19 rescission. You know, the consumer can always
20 cancel, but when they rescind the contract, I
21 mean, it's like it's -- you know, it didn't
22 happen.

23 MS. EULER: Void ab initio.

24 MR. STALTER: Yes.

25 MR. OTTO: You could just do a

1 reference to the section that deals with
2 cancellation that says any cancellation or
3 rescission under the section shall be done
4 pursuant to the section that says
5 cancellation, and that already references the
6 5 percent.

7 MR. STALTER: Yeah. I think that's
8 the issue. You don't get back the origination
9 free.

10 MS. EULER: Yeah. We don't want
11 inconsistency in the statute.

12 MR. KRAUS: But is the issue how to
13 rescind, or the result of a rescission?

14 MR. STALTER: The result of a
15 rescission.

16 MR. KRAUS: The result of that.

17 CHAIRMAN: So, are you guys good?

18 MR. KRAUS: And just setting out in
19 rule what happens, I guess, when someone does
20 a rescission?

21 MS. EULER: Say that all cancellations
22 and rescissions shall be done in accordance
23 with the statute pursuant to whatever.

24 MR. McCULLOCH: So, you're going to,
25 basically, treat them as the same.

1 MS. EULER: Huh?

2 MR. McCULLOCH: You're, basically,
3 treating them as the same?

4 MS. EULER: Yeah.

5 MR. STALTER: In other words, the
6 cancellation and rescission mean the same
7 thing as cancellation?

8 MS. EULER: Right.

9 CHAIRMAN: Everybody good?

10 MR. KRAUS: It's the same result.

11 MS. EULER: Yeah. They have to follow
12 the other sections of the statute for internal
13 consistency within the statute.

14 MR. KRAUS: Okay. Thirty. Will the
15 Board apply this retroactively to preclude
16 sellers from correcting problem contracts for
17 arrangements?

18 MS. EULER: No.

19 MR. STALTER: So, we can -- with
20 existing contracts, we can go back and we
21 could -- (inaudible) -- banks a lot of little
22 accounts. I mean, where they have, you know,
23 five contracts or three contracts or something
24 like that. So, I mean, they're not going to
25 have a complete placement of trustee. So,

1 they're probably going to have to either look
2 at, you know, putting them into joint
3 accounts. Switching the funding is really --
4 you know, I think, by rule, you know -- we
5 want to be careful about how we do that.

6 MS. EULER: Okay. So, if what you
7 mean is will this apply to things that are
8 changed on old contracts, the answer is yes.
9 Does this mean we plan to go back to people
10 who did rollovers last year or the year
11 before? No. But if you currently have a
12 trust account with old contracts and you need
13 to change those to another funding source,
14 then, yes, you need to get written consent of
15 the purchasers. And I think that the Board
16 does need to do a rule on what constitutes
17 written consent, unless somebody has further
18 comment on that.

19 MR. McCULLOCH: A rule on what is
20 written consent?

21 MS. EULER: Yes.

22 MR. McCULLOCH: You can do it.

23 MR. STALTER: What constitutes
24 consent; is that --

25 MR. McCULLOCH: That's -- doesn't that

1 just mean what it says?

2 MS. EULER: Yeah. I think we need to
3 do a rule, though, and say, you know, who this
4 written consent needs to be given to.

5 MR. STALTER: Because, I mean, we've
6 -- some of the old contracts --

7 MS. EULER: Does it need to be signed
8 and dated? Does it -- can it be electronic,
9 those sorts of questions.

10 MR. ZELL: Excuse me, Sharon. Are you
11 interpreting that or are you just saying
12 that's what you want or --

13 MS. EULER: For what --

14 MR. ZELL: I don't know how you can go
15 back to those old contracts, 30, 40 years old,
16 and say we need you to redo this, sign an
17 agreement. I don't understand how that works.
18 A new law is passed and goes into effect, and,
19 all of a sudden, it's going back to affect
20 things 30 years ago?

21 MS. EULER: Not if you're maintaining
22 them in the same trust -- in the trust, but
23 if you're changing them from a trust to a
24 joint account, you need to let the purchaser
25 know.

1 MR. FRAKER: And, Sharon, what if
2 they're not -- there's nobody else, you know.
3 There's nobody else to take care of them?

4 MR. KRAUS: No one to get written
5 consent from, you mean?

6 MR. STALTER: Yeah. They've declared
7 incompetency. There could be a lot of issues
8 that could come up. And I've got, like, 15
9 trust accounts where they've all got, like,
10 five contracts, you know. Some of them are
11 old contracts. So, you know, in essence, the
12 bank is going to hit them with a, you know, a
13 minimum fee of \$1,500. And it's just
14 prohibitive, so -- and it's -- go ahead.

15 MR. McCULLOCH: What do you really
16 think the problem is? What do you think is
17 going to happen out there that this is going --

18 MS. EULER: What's the problem?

19 MR. McCULLOCH: Yeah. What do you
20 think --

21 MS. EULER: The problem is people who
22 are now finding out they have NPS contracts
23 when they bought the contract from Becky's
24 Funeral Home.

25 MR. McCULLOCH: There's people like

1 that?

2 MS. EULER: And now they're finding
3 out that Becky's Funeral Home rolled it over
4 to Forethought who rolled it over to
5 Homesteaders who rolled it over to Dignity,
6 who rolled it over to Bill's Trust Company,
7 who then sold it to NPS.

8 MR. McCULLOCH: Okay. But what's the
9 problem? I don't -- tell me exactly --

10 MS. EULER: What's the problem with
11 that?

12 MR. McCULLOCH: Yeah. What's the
13 problem with that?

14 MS. EULER: Because the consumer now
15 says what do you mean I have an NPS contract,
16 or what do you mean I have a Homesteaders
17 contract? I would never do business with that
18 Jim Reinhard. I bought a funeral plan from
19 Becky's Funeral Home and I have a contract
20 right here. It says Becky's Funeral Home and
21 Becky is going to put it in her own bank.

22 MR. McCULLOCH: And if she goes back to
23 Becky's Funeral Home, she'll get her funeral.
24 That's really all the consumer cares about.
25 If she goes back there, she gets her funeral.

1 MS. EULER: Unless --

2 MR. McCULLOCH: Unless what?

3 MS. EULER: -- they get --

4 MR. SPEAKS: Unless Jim went broke.

5 MS. DUNN: Unless that funeral home
6 closed.

7 MS. EULER: Yeah.

8 MR. McCULLOCH: Well, there's no
9 provision for that anyway, so, again, what's
10 the problem?

11 MR. REINHARD: That's right.

12 MS. EULER: The problem is, is the
13 customer --

14 MR. McCULLOCH: You just don't like it?

15 MS. EULER: No. The problem -- well,
16 one, that's what the law says, and, two, the
17 customer bought a funeral from -- bought a
18 preneed plan from Becky's Funeral Home. If
19 Becky is going to roll that over and,
20 suddenly, the customer is going to be doing
21 business with Jim's Funeral Home, the consumer
22 needs to know.

23 MR. McCULLOCH: That's going forward.

24 MS. EULER: Right.

25 MR. McCULLOCH: And we agree.

1 MS. EULER: Right. Going forward.

2 MR. McCULLOCH: But you're concerned
3 about going backwards.

4 MS. EULER: No.

5 MR. STALTER: Well, I've got -- we're
6 still talking about Becky. Becky has sent to
7 me -- Becky has five trust-funded contracts
8 with this bank.

9 MS. EULER: Uh-huh. Yeah.

10 MR. STALTER: And then says, you know,
11 we don't want this anymore. We're looking at
12 what we have to do for administration and so
13 forth. We don't want to do this anymore.
14 So, Becky, you're going to have to pay, you
15 know, three times what you paid in the past.
16 And --

17 MS. EULER: Well, Becky can roll those
18 over. She just needs to get the consent of
19 the purchaser.

20 MR. OTTO: I think we're wrong here in
21 the very basic, at least on this section. On
22 this section, you can go from trust A to trust
23 B to trust C without consumer consent.

24 MR. STALTER: That's right.

25 MR. OTTO: You just can't take a joint

1 account and then change it to a trust-funded
2 account, or take that joint account and buy
3 insurance with it. So, the rollover -- a
4 legitimate rollover where you're in trust A
5 and, like you said, the first trustee doesn't
6 want to do it anymore, so you change it to
7 trust B --

8 MS. EULER: But that's not what Bill is
9 talking about.

10 MR. OTTO: Well, yeah.

11 MS. EULER: No. I mean --

12 MR. OTTO: Bank #1 -- well, arguably --

13 MS. EULER: He's talking about
14 changing from trust-funded to joint accounts.

15 MR. STALTER: Yes.

16 MR. OTTO: Okay.

17 MS. EULER: And even if somebody is
18 incompetent, those people have somebody who is
19 a power of attorney. Somebody is acting on
20 their behalf. And I know it's a pain, but --

21 MR. McCULLOCH: But that's what I'm
22 saying. You think that there is going to be
23 people out there that are going to cause a
24 problem by taking it from a trust to a joint
25 account, that that's going to cause a problem?

1 MS. EULER: Yes.

2 MR. McCULLOCH: Why?

3 MS. EULER: The problem is that the
4 consumer doesn't know. The consumer thinks
5 they have a trust account.

6 MR. McCULLOCH: Yeah. But the
7 consumer has a funeral that's still going to
8 get taken care of, and that's really all
9 they're concerned about.

10 (Several people talking simultaneously.)

11 CHAIRMAN: Let me ask this question.

12 MR. McCULLOCH: Why wouldn't they be?
13 They gave them their money. As long as you
14 give them the funeral, what do they care?

15 MS. EULER: John, I can give you 50
16 people to call who I have talked to recently --

17 MR. McCULLOCH: But they don't have
18 legitimate complaints, though. So, you tell
19 them, you say, look guys, the consumer, if
20 they get their funeral, that's all they care
21 about.

22 MS. EULER: But that's -- the law is
23 what the law is here.

24 MR. McCULLOCH: Yeah. But you're
25 trying to go back. Is that what we're

1 discussing, the going back or --

2 (Several people talking simultaneously.)

3 MS. EULER: No. I'm not trying to go
4 back.

5 MR. STALTER: That's one issue.
6 Retroactive. In other words, we say you
7 cannot change the funding mechanism.

8 MS. EULER: Right.

9 MR. STALTER: And what I hear you
10 saying is that we're going to apply that
11 retroactively.

12 MS. EULER: No. We're not applying it
13 retroactively. Right now, it's a trust
14 account.

15 MR. KRAUS: And if you take an action
16 today or after the new law -- after the 28th,
17 then you're taking that action under the
18 provisions of the new statutes. You may be
19 changing a contract that you entered into ten
20 years ago, but you're going to change that
21 contract. So, the law the day you're doing
22 that applies, and that's this. So, you would
23 have to get the written consent of the person
24 to change it to a joint account. That's not
25 retroactive.

1 MR. REINHARD: So, you better get
2 those off the books now before the 28th.

3 MR. STALTER: Some of them are yours;
4 don't you know that?

5 CHAIRMAN: If, in a new contract --

6 MR. REINHARD: I'm burning records
7 every day.

8 CHAIRMAN: -- front page of there
9 somewhere, big disclosure that says you give
10 Martin Vernon Funeral Home the option to move
11 this contract from joint account to trust to
12 life-insurance policy at the discretion of the
13 funeral home to -- whatever the right words
14 are -- to be a legitimate thing. It's on the
15 new contract. Legal, not legal. They sign it
16 right there.

17 MR. KRAUS: I think that's something
18 that -- I mean, we were just talking about,
19 you know, whether the rule would state what
20 constitutes written consent.

21 MS. EULER: Right. Right.

22 MR. KRAUS: And that would fall --

23 MR. SPEAKS: That would be legal.

24 MR. KRAUS: That would fall under,
25 well, what's the rule say.

1 MS. RUSSELL: It's no different than a
2 trust says that, giving the authorization to
3 change trustees.

4 MS. EULER: Uh-huh. Uh-huh.

5 MS. RUSSELL: Yeah.

6 MR. KRAUS: It could be okay if that's
7 what you want in the rule.

8 MS. EULER: And that's why we need a
9 rule.

10 CHAIRMAN: And I mean literally from
11 vehicle to vehicle.

12 MR. KRAUS: Right.

13 MS. EULER: That's why we need a rule.

14 CHAIRMAN: Not just trust A to trust B;
15 literally, go from a joint account to a trust
16 or from a trust go buy a single-premium
17 life-insurance policy. I'm talking legitimate
18 deal here now.

19 MS. EULER: Right. And that's a
20 legitimate thing to put in the rule.

21 CHAIRMAN: And it's right there on the
22 contract. They sign it.

23 MS. EULER: Uh-huh.

24 CHAIRMAN: Their signature on that
25 particular box that says I give you the

1 authority to do that.

2 MS. EULER: Yeah.

3 MR. SPEAKS: You could do that.

4 MS. EULER: Well, that's something to
5 address in the rule, does that constitute
6 written consent?

7 MR. KRAUS: Right. And that's what we
8 were talking about as to when the consent is
9 issued, can it be before -- you know, way
10 beforehand? Does it have to be at the time?

11 MS. EULER: Does it need to be within
12 30 days?

13 MR. KRAUS: Yeah. Set all that out in
14 rule, whether it does or doesn't.

15 MR. OTTO: I actually don't have a
16 position on Bill's problem one way or the
17 other, but -- I really don't. But I don't
18 want any of these regulations to get
19 challenged and bogged down. And I refer back
20 to 436.412 which we've dealt with before.
21 Each preneed contract made before August 28th,
22 2009, and all payments and disbursements under
23 such contracts shall continue to be governed
24 by this chapter as the chapter existed at the
25 time the contract was made. And I think

1 that's a pretty clear sentence. And I think
2 if you do a rule that even arguably goes
3 against that sentence, you've got a risk of
4 somebody challenging and bogging this whole
5 thing down.

6 MS. EULER: But it's payments and
7 disbursements under the contract.

8 MR. OTTO: No. Each premium contract
9 made before and all payments and disbursements
10 made under the contract.

11 MR. SPEAKS: That's right.

12 MS. EULER: I see what you're saying,
13 Don.

14 MR. OTTO: And like I said, I really
15 don't -- this particular issue, I don't have a
16 position.

17 MR. McCULLOCH: We need to just leave
18 it alone, let the going forward, unless you
19 just think there's a real problem out there
20 with this.

21 MS. EULER: Well, the --

22 MR. McCULLOCH: If these guys have a
23 problem, it needs to be fixed.

24 MR. KRAUS: But that's still just
25 talking about enforcing the contract as it

1 stands.

2 MS. EULER: Right. This statute is
3 what it --

4 MR. KRAUS: Not changes going forward.

5 MS. EULER: Right. And this statute
6 is what it is, and the question before us
7 today is: Do we need to do any rules to
8 define what written consent means? And if the
9 Board says no, then we don't need to, and we
10 can let it go. If you want to do some rules
11 about it, we can.

12 MR. SPEAKS: Sharon?

13 MS. EULER: Yes.

14 MR. SPEAKS: Brad Speaks. I think the
15 premise underlying your doggedness on this has
16 to do with the fact that National Prearranged
17 Services manipulated the funding vehicles to
18 their advantage. Meanwhile, nobody knew that
19 was going on. And so, if this was placed
20 into effect, going forward on all new
21 contracts, all new trusts, that would stop
22 that, theoretically.

23 MS. EULER: Uh-huh. Uh-huh. And
24 that's part of it. Not all of it, but it's
25 part of it.

1 MR. REINHARD: Let's go on.

2 CHAIRMAN: Okay.

3 MS. EULER: So, do you want to do a
4 rule or not?

5 MR. McCULLOCH: No.

6 MR. REINHARD: No.

7 MR. FRAKER: No. Let's let it go.

8 MS. EULER: Okay.

9 CHAIRMAN: Let it go. All right.

10 MR. KRAUS: Okay. New section.

11 436.430, trust-funded contract requirements.
12 We're up to 32. Should there be a rule on
13 the following things, whether the following
14 are included or excluded from the trusting
15 requirement: Administrative fees, State
16 preneed-contract fee, late fees, finance
17 charges, as a part of all payments.

18 CHAIRMAN: Anybody got a thought? Yes?

19 MS. BATEMAN: I just honestly think
20 that you would need to make sure it's clear
21 that -- (inaudible) -- is not related to the
22 preneed contract itself to the merchandise or
23 the services, it's not included in the old
24 payment. So, any kind of financing behind
25 whether it's administrative fees or late fees

1 or any of those will not have to be
2 transferred -- (inaudible.)

3 CHAIRMAN: Okay.

4 MS. EULER: From an auditing
5 perspective, the idea behind the statute was
6 that all the money goes into the trust account
7 so that it's easy to track.

8 MR. KRAUS: So, are we talking about --

9 MR. ZELL: When are you going to get
10 your 50 new bucks?

11 MR. KRAUS: I'm sorry. Go ahead.

12 MR. ZELL: When is the audit fee going
13 to be due?

14 MS. EULER: I'm sorry? What?

15 MR. McCULLOCH: End of the year,
16 probably.

17 MS. EULER: End of the year.

18 MR. STALTER: He's thinking about in
19 the payment sequence. In other words, at what
20 point is it, the first payment? Is it the
21 last payment? When do you require the \$150?

22 MS. EULER: Or whatever? The fees
23 owed to the State Board will be due whenever,
24 probably the end of October. And those fees
25 are payable by the seller, they're not payable

1 by the consumer.

2 MR. STALTER: I understand. I think
3 what Steve's question is, though, in the
4 sequence of when you would up and pay the fee
5 out of the first installment received. The
6 contract is -- you know, we sell a contract --

7 MS. EULER: The -- and I don't think it
8 matters because --

9 MR. WESTBY: (Inaudible.)

10 MS. EULER: And that's something that
11 I need to think about.

12 MR. McCULLOCH: Well, the way it is
13 currently, if you make a contract today, at
14 the end of October, you're going to pay the
15 fee.

16 MS. EULER: Right.

17 MR. McCULLOCH: Whether you collected
18 it or not. That's up to you or how you --
19 you know, in our case, we get it on top of,
20 so -- in addition to, but I don't now how
21 everybody else does it.

22 MR. KRAUS: Right. I mean, I kind of
23 see them as separate things. I mean, you have
24 the preneed contract, everything that's
25 accounted for in there with regard to costs

1 and fees, and this is going to be this amount,
2 this is going to be that amount. And then
3 you have obligations as a licensee that you
4 owe this much money to the Board for however
5 many contracts you do. You may have
6 coincidentally collected some of that money
7 through those contracts or not, depending on
8 how your contract is structured, but that has
9 no impact as to when you have to pay it. And
10 where that money comes from, that money comes
11 from the licensee. And if that licensee
12 chooses to recoup some of that money through
13 those contracts, that's up to them, but it's
14 still a part of the contract; right?

15 MS. EULER: Unless you want to pay the
16 administrative fee on a pay-as-you-go basis,
17 which would be a nightmare for the Board.

18 MR. OTTO: Don Otto. The issue from
19 -- I mean, I don't think it's a problem all
20 the money going into the trust initially. But
21 it needs to be made clear that the \$52.30 fee
22 can be taken out by the seller.

23 MS. EULER: Yeah. I was thinking
24 that, too.

25 MR. OTTO: That it was just clear that

1 that doesn't have to stay in the trust till
2 the end, that that is a legitimate fee that
3 can be taken out if you charge the consumer
4 for that.

5 MS. EULER: Yeah.

6 MR. OTTO: Now, you know, if you pass
7 that along to the consumer, you can -- that's
8 okay to withdraw that out.

9 MS. EULER: Yes.

10 MR. ZELL: So, answer the same
11 question. Stephen Zell. Which dollar is it?
12 There are \$3,600 payments, 36-month payments
13 of \$100. You have \$1,200 the first year.
14 Guess what? That \$50 has to be paid. So,
15 was that the --

16 MS. EULER: And I don't have an answer
17 for your question right now. How's that for
18 honesty? Let's think about that.

19 CHAIRMAN: She's got a question.

20 MR. STALTER: Yeah. Let's be a little
21 more assertive.

22 (Several people talking simultaneously.)

23 MS. RUSSELL: They want you to yell a
24 little bit. Do a little yelling.

25 MS. BATEMAN: No. I agree with you on

1 the fee, but when it comes to things like the
2 finance charges, if you're charging on an
3 installment contract to the customer and
4 you're charging them 5 percent making your
5 deposit all along into trust, how are you
6 going to get it out? You don't even have any
7 provisions in here that allows you to get it
8 out. So, there is nothing that requires in
9 here that the money goes directly to the
10 trustee, either. All it says is you have to
11 deposit with -- it can come to the seller and
12 then ultimately do it right. So, I do think
13 that it needs to be very clear that it's just
14 on preneed money just on the stuff that is for
15 funeral merchandise or services.

16 MR. OTTO: What finance charge are we
17 worried about here?

18 MS. BATEMAN: I charge you on
19 installment and I'm charging you 5-percent
20 finance charges for putting it on an
21 installment payment. So, for every payment
22 that you're making to me, I'm taking a portion
23 of that, the stuff that is on the FTC
24 disclosures. Am I making any sense?

25 MS. EULER: Yeah. I know what you're

1 talking about. We'll have to think on that.

2 (Several people talking simultaneously.)

3 MR. McCULLOCH: Well, let's think on it
4 because that's important. And you're right,
5 you shouldn't have to put all that in there.
6 The only thing that this is about is the money
7 that's required for the preneed, not anything
8 else.

9 (Several people talking simultaneously.)

10 MS. EULER: If you pay today, it's
11 \$10,000 flat fee. If you pay over time, it's
12 \$10,000 plus 5-percent interest.

13 (Several people talking simultaneously.)

14 CHAIRMAN: Okay. Back up. Lawyers
15 think we have to think about it a minute.

16 MS. EULER: Yeah.

17 CHAIRMAN: And you guys are what?

18 MS. EULER: I mean, you can talk about
19 it.

20 MR. REINHARD: Well, why don't you
21 think and we'll talk about another subject.

22 MS. EULER: John, do you want to say
23 something?

24 MR. McCULLOCH: We're just confusing
25 things, I think. The preneed is all about you

1 all wanting that 85 -- 95 percent of it to go
2 into the trust, but not the finance charges,
3 not the State fees, all those things. That
4 was never intended to go in there.

5 MR. REINHARD: No.

6 MR. McCULLOCH: We're just bringing it
7 up. A lot of you are looking like you don't
8 even know what it is, so, obviously, you
9 didn't think about that.

10 MR. STALTER: It's really the audit
11 issue. I mean, there's a way to have a pool
12 come through a clearing account and then
13 divide things up. All the payments get to
14 trust. And the issue is, are you going to
15 make it all come to the trustee, and then the
16 trustee take instructions about how to
17 distribute it out?

18 MR. McCULLOCH: And that's what you
19 would have to do, because they don't
20 understand, either.

21 MR. STALTER: Yeah.

22 MR. McCULLOCH: I mean, you'd have to
23 spell it all out.

24 (Several people talking simultaneously.)

25 MS. EULER: And that's why I think

1 that Earl and I need to think about this from
2 a legal perspective.

3 MR. McCULLOCH: Keep in mind, all this
4 costs money.

5 MS. EULER: Yeah, I know.

6 MR. McCULLOCH: As a small business,
7 you've got to think about that.

8 MS. EULER: Yeah, I know.

9 MR. McCULLOCH: And everything you
10 want that trustee to do, there's a cost
11 involved.

12 MS. EULER: I understand.

13 MR. McCULLOCH: So --

14 MR. REINHARD: Kind of like the
15 funeral-home paperwork.

16 MS. BATEMAN: And some providers, like
17 we do, we don't go to the trustee first. We
18 do all the administration in my office. The
19 trustee wouldn't have a way of knowing out of
20 this payment take this much to post to finance
21 charges because I don't keep those kind of
22 records. So, it will not work for somebody.

23 MR. REINHARD: Right. For you all.

24 CHAIRMAN: So, I think where we're at
25 with that is we've got to think about it some

1 more?

2 MS. EULER: Uh-huh.

3 CHAIRMAN: Is that where you guys are?

4 MS. EULER: Yeah. Let Earl and I do a
5 little research on this and come back with it.

6 MR. McCULLOCH: We don't. They may
7 have to, but we don't.

8 CHAIRMAN: Well, that's what I mean.

9 MS. EULER: You don't.

10 MR. McCULLOCH: We don't have to
11 divide the trust.

12 CHAIRMAN: Well, so, is the
13 instruction of the Board for them to look at
14 that some more or just we're done with it?

15 MR. REINHARD: Well, I think we've got
16 to clarify it for these people in a rule.

17 MR. McCULLOCH: That these things do
18 not have to be included.

19 MR. REINHARD: Yeah. Like you say,
20 finance.

21 MR. McCULLOCH: Administrative fees,
22 you know, and finance charges. It doesn't say
23 that on here, but if you want to call it the
24 contract fee, late fees. Well, it does have
25 finance charges, so those things are just

1 going to clutter it all up.

2 MS. BATEMAN: I think that if you tied
3 it up with a description of preneed contract,
4 I think that maybe you may be able to do that
5 easier because it just talks about the
6 arrangements and the merchandise and the
7 services.

8 MR. KRAUS: Right. Yeah. We may be
9 able to draw a line there somewhere, but we
10 can look at that and try to come back with
11 something useful.

12 CHAIRMAN: Okay.

13 MS. DUNN: So, okay to clarify?

14 MS. EULER: Yeah.

15 CHAIRMAN: All right.

16 MR. ZELL: I hate to say this, but
17 trust companies do not want to do this. I'm
18 involved with one right now. They do not want
19 to trade these little things back and forth.
20 That's called a bank, not a trust company.

21 MS. EULER: Okay.

22 CHAIRMAN: All right.

23 MR. KRAUS: Thirty-three. Payments
24 made directly to the trust from the consumer.
25 We talked about that already, didn't we?

1 MS. EULER: I think so.

2 MR. FRAKER: Uh-huh.

3 CHAIRMAN: That was just could be;
4 right -- or whatever?

5 MR. KRAUS: Yes. That they could, but
6 they're not required to.

7 MS. EULER: Right.

8 CHAIRMAN: Right.

9 MS. EULER: And 34 and 32 are the same.

10 MR. KRAUS: Yeah. That's the same.
11 Thirty-five is the same. Define rule if this
12 means all funds must be deposited in the
13 trust, and after the deposit, they may be
14 disbursed by the trustee.

15 MS. EULER: And that's the same.

16 MR. KRAUS: And that's the same deal,
17 too. What happens if the trustee has a
18 dispute over the request?

19 MS. BATEMAN: Can I ask one more
20 question on 33? Is it understood that if the
21 purchaser hasn't paid me 5 percent, I cannot
22 take anything out? Right. So, if I have
23 only collected three and he stops paying, I'm
24 stuck not be able to get the origination fee
25 out? Because it says seller may make this

1 request after 5 percent of the total amount
2 has been deposited, so --

3 MR. OTTO: Well, there's -- there was
4 an unfortunate drafting problem that I tried
5 to talk Charlie out of and it exists. The
6 5-percent fee can only come in after 5 percent
7 has hit the trust. However, the 10-percent
8 optional fee can come out as the dollars come
9 in. So, in other -- if you're taking 15
10 percent out, it doesn't matter. You can take
11 5 percent of the 10, then 5 percent of the 5,
12 and then 5 percent of the other 10. The only
13 time that that is an issue is if you're only
14 taking 5 percent out and then your statement
15 would be correct, I believe. You have to wait
16 till 5 percent is in before you can take it
17 out.

18 MS. BATEMAN: So, again, if he only
19 pays 3 percent, then I'm out --

20 MR. OTTO: You can't take out the 5
21 percent under paragraph 3, but you can take
22 out that 3 percent under paragraph 4 for your
23 10 percent.

24 MS. EULER: Let's add that to the
25 things to look up.

1 MR. KRAUS: Okay.

2 MR. OTTO: See, because under
3 paragraph 3, you can take out 5 percent, which
4 is yours forever. Under paragraph 4, you can
5 take out another 10 percent, but that's
6 subject to be refunded. Unfortunately, the 10
7 percent can come out dollar for dollar as it
8 comes in while the 5 percent can only be taken
9 out after 5 percent has been deposited into
10 the trust. So, if you're taking 15 percent
11 out, it's not a problem. You can start taking
12 it out dollar for dollar right away.

13 MS. EULER: We'll take a look at that
14 and see if we can address that in a rule.

15 MR. OTTO: But it is a problem if
16 you're only taking out the 5 percent.

17 MR. McCULLOCH: It would sure help
18 clarify if there was some way to clean that up
19 where you can just take it as it comes in.

20 MS. EULER: Yeah. That's what I'm
21 saying. Let's take a look at that.

22 MR. McCULLOCH: Yeah. Because that's
23 going to be a problem.

24 MR. OTTO: Well, one thing, you'll
25 force people to take out the 15 percent,

1 arguably, that may not want to. They really
2 only want the 5, but they want it dollar for
3 dollar coming in. And so, they're going to
4 use a paragraph 4 excuse to take out the money
5 when -- so, you might have people taking out
6 15 percent that really only want to take out 5.

7 MR. KRAUS: So, then if there is a
8 dispute about a request to a trustee, then do
9 we want to have any rules about such disputes?

10 MS. EULER: I think that's a good idea.

11 MR. OTTO: WWF cage match.

12 MR. KRAUS: Like what?

13 MS. EULER: Cage fighting.

14 MR. REINHARD: That could give him the
15 rules of encounter.

16 MS. EULER: Mixed martial arts.

17 MR. McCULLOCH: What rule -- what do
18 you mean, now? If there's a dispute, what do
19 you mean there?

20 MR. KRAUS: If someone submits a
21 request to a trustee for, say, a disbursement,
22 and either the trustee --

23 MS. EULER: The trustee doesn't agree.

24 MR. KRAUS: -- if the trustee doesn't
25 agree with it or they get conflicting

1 requests, then do you want to address by rule
2 how those are to be resolved or leave that to
3 whatever -- I guess, whatever processes the
4 trustee has.

5 MS. EULER: Well --

6 MR. McCULLOCH: Now, are you speaking
7 of a seller requesting it --

8 MS. EULER: Yeah. Yeah.

9 MR. McCULLOCH: -- or a purchaser?

10 MS. EULER: The seller.

11 MR. McCULLOCH: The seller.

12 MR. KRAUS: I would assume, but, you
13 know, they could receive all sorts of things.

14 MS. EULER: The seller requests 5
15 percent and the trustee says, no, because I've
16 only received 4.9 percent. If we want to
17 discuss a rule on how -- a process to resolve
18 that.

19 MR. KRAUS: I kind of think that's
20 their deal.

21
22 MS. EULER: I think so, too. Okay.

23 MR. KRAUS: Whatever the Board wants.

24 MS. EULER: Yeah, I think it's their
25 deal.

1 (Several people talking simultaneously.)

2 MR. KRAUS: Do you think that's their
3 deal?

4 CHAIRMAN: I think that's their deal.

5 MR. REINHARD: Deal.

6 MR. KRAUS: All right.

7 MR. STALTER: There's a rule in here
8 someplace.

9 MR. KRAUS: Thirty-eight. Let's see.
10 Ten percent. We just talked about that.
11 Thirty-nine, State or federally chartered
12 financial institutions. Fairly typical to
13 require the fiduciary to be located within the
14 state. Will foreign fiduciaries be required
15 to comply with Missouri's 362.600. I don't
16 even know what that is.

17 MS. EULER: What's 362.600 say, Bill?

18 MR. KRAUS: What is that?

19 MR. STALTER: Here's my issue. Well,
20 I've got Tom Richards interpreting this kind
21 of -- this section one way, and I guess I
22 want to know how you all interpret it. In
23 other words, this is a fairly common provision
24 from state to state in terms of, yeah, are you
25 really requiring that the fiduciary to have

1 brick and mortar in this state, or, I mean,
2 basically, I mean, as long as they transact
3 business in the state, is it okay?

4 MS. EULER: They have to have
5 authority to exercise trust powers in the
6 state.

7 MR. STALTER: Well, but you have -- we
8 have OCC charters and ODS charters. And,
9 basically, the way that their charter is
10 constructed, they don't have to have it in the
11 location within a state. And they said that
12 they are not subject to, you know, the charter
13 requirement in Missouri. Now, I'm just
14 looking for clarification.

15 MS. EULER: Well --

16 MR. KRAUS: And right on cue.

17 MS. EULER: Mark probably doesn't know
18 anything about Division of Finance law.

19 MR. KRAUS: No?

20 MR. STAHLHUTH: No.

21 MR. KRAUS: Sure, he does.

22 MS. EULER: My guess is we're going to
23 take a break here shortly. Let me call
24 Christie over at Division of Finance and see
25 if she can help clarify that.

1 MR. KRAUS: There we go. See, I tried
2 to throw you out there and it didn't work.

3 MS. EULER: I saved you all. Note for
4 the record, I saved you. You owe me.

5 MR. STAHLHUTH: Okay.

6 CHAIRMAN: So, Sharon, you're going to
7 make a phone call?

8 MS. EULER: I'll make a phone call, if
9 we take a break soon.

10 CHAIRMAN: Soon?

11 MR. KRAUS: Was that a hint?

12 MS. EULER: That was a hint.

13 CHAIRMAN: Well, define control first.

14 MR. KRAUS: Well, let's get through
15 K40. Oh, boy. There's a whole bunch more on
16 the next page. Are we defining control?
17 Control would be controlled by nor be under
18 common control of the seller or preneed agent.

19 MS. EULER: I think there is a body of
20 law out there that talks about what it means
21 to be controlled.

22 MR. KRAUS: I think so, too.

23 MR. STAHLHUTH: Isn't that what this
24 does when it says they may want to define
25 control. I thought that's what this did.

1 MR. KRAUS: It does.

2 MS. EULER: Yeah.

3 MR. KRAUS: Well, further define was
4 the suggestion.

5 MS. EULER: Yeah. I don't think so.

6 MR. KRAUS: I don't think that we need
7 to.

8 CHAIRMAN: No. We want to make a rule.

9 MR. STAHLHUTH: No, you don't want to
10 make a rule.

11 MR. KRAUS: All right. That was easy.

12 MS. EULER: All right.

13 MR. KRAUS: Ready?

14 CHAIRMAN: Okay.

15 MS. EULER: Let us break.

16 CHAIRMAN: I hear a break.

17 (Off the record)

18 CHAIRMAN: Okay. Let's pick it back
19 up and get started. We have been requested to
20 hold where we are in the trust section because
21 we have Mark with us and we want to make sure
22 we get to this part, so I think we're going
23 to jump ahead to the -- I know we're going to
24 jump ahead to the insurance part, wherever
25 that's at. 436.450.

1 MR. KRAUS: 450.

2 MS. EULER: Oh. Do you want me to
3 give an update on Division of Finance?

4 CHAIRMAN: Sure.

5 MS. EULER: I talked to Christie
6 Concannon, who is the general counsel for
7 Division of Finance, who says that foreign
8 corporations need to be registered pursuant to
9 the statutory section cited to do their trust
10 business in Missouri. So, yes is the answer
11 to your question.

12 MS. BATEMAN: Yes is the answer,
13 meaning they just need to register, they don't
14 need to have a brick and mortar?

15 MR. McCULLOCH: They have to have
16 brick and mortar?

17 MS. EULER: They need to be authorized
18 to exercise trust powers in Missouri.

19 MS. BATEMAN: (Inaudible.)

20 MS. EULER: Yes.

21 MS. BATEMAN: Okay.

22 MR. STALTER: (Inaudible.)

23 MS. EULER: Okay.

24 CHAIRMAN: Okay.

25 MR. KRAUS: All right. 450, K59.

1 Payments collected by or on behalf of a
2 seller, address purchaser paying insured
3 directly. We have covered that; right?

4 MS. EULER: Uh-huh.

5 MR. KRAUS: Oh. All right. Yes.
6 Insurance on the other handout. Let's see.
7 From Mark. Insurance-funded preneed contract
8 need not comply with those sections that
9 specifically deal with trust-funded and
10 joint-account-funded preneed funeral
11 contracts. That's looking at the handout that
12 looks like this from Mark Warren.

13 MS. EULER: Which I don't think
14 everybody has.

15 MR. KRAUS: Does everybody have that?
16 I think it was on the table.

17 MS. DUNN: Somebody has taken all
18 mine. Do you want some more copies?

19 MS. EULER: Would you all like copies
20 of this?

21 CHAIRMAN: Anybody else not have it?

22 MS. DUNN: Anybody else need one?

23 MS. EULER: Mark, my question on that
24 is: Which specific sections -- call Mark.

25 MS. WARREN: Probably need to.

1 MR. McCULLOCH: I've got his.

2 MS. WARREN: But let me hear your
3 question before -- maybe I can answer.

4 MS. EULER: Because I know that one of
5 the issues that came up as we were discussing
6 this and the legislature rejected was that
7 with insurance-funded contracts, there still
8 needs to be a seller. And, I know currently,
9 right now, there is not, meaning a licensed
10 preneed seller. And I don't know. There's
11 been some issue, and Mark and I talked this
12 morning about some of the insurance contracts
13 that are preneed contracts, but there is
14 currently no preneed seller.

15 MS. WARREN: You mean, like an
16 insurance producer, agent -- licensed agent?

17 MS. EULER: Like -- and I'm just going
18 to pick on one of your clients.

19 MS. WARREN: Okay.

20 MS. EULER: The Homesteaders form has a
21 preneed contract attached to it, but there is
22 no preneed seller currently. So, for
23 insurance companies -- for insurance-funded
24 preneed contracts, there needs to be a preneed
25 seller. So, I'm wondering if that's what you

1 were talking about with that first comment,
2 that insurance contracts don't need to comply
3 with other sections. I don't know. Is there
4 any --

5 MS. RUSSELL: I think he was talking
6 -- Mark was talking this morning about my
7 issue with the contract having not have to
8 have the joint-account and the trust-account
9 stuff.

10 MS. EULER: Oh, okay.

11 MS. RUSSELL: That's what Mark was
12 talking about this morning --

13 MS. EULER: Okay.

14 MS. RUSSELL: -- regarding that
15 section.

16 MR. KRAUS: Well, including the certain
17 language in there?

18 MS. RUSSELL: Yes. That's what he was
19 talking about there, and I think we beat that
20 to death, too.

21 MS. EULER: Okay. So, that's nothing
22 new.

23 MR. KRAUS: Yeah. We're going to try
24 to work something out on that.

25 MR. SPEAKS: He raised that issue the

1 other day, too, about the seller and what
2 about companies like Homesteaders or
3 Forethought.

4 MR. KRAUS: About whether there needs
5 to be one?

6 MR. SPEAKS: Right.

7 MS. RUSSELL: And yes. Yes, there has
8 to be a preneed contract. Yes.

9 MR. SPEAKS: And the law says there
10 has to be, yeah.

11 MS. RUSSELL: Yes.

12 MR. KRAUS: Okay. Do we need to
13 address that further in a rule at all?

14 MS. EULER: Well --

15 MR. KRAUS: I don't think so, but --

16 MR. SPEAKS: I know he was wondering,
17 if I recall then, just in his comments, did
18 that mean that Homesteaders had to get a
19 sellers license?

20 MS. RUSSELL: Not -- they could. They
21 could, but --

22 MR. SPEAKS: They could, but they
23 don't want to.

24 MR. KRAUS: That's one way of doing it.

25 MS. RUSSELL: (Inaudible) -- the

1 funeral home.

2 MR. SPEAKS: At least that's what I
3 understood he was saying.

4 MS. RUSSELL: It's a funding mechanism
5 like -- you know, like I always say, joint
6 accounts or anything else. Like, in our
7 instance, the funeral home, I make sure the
8 funeral home is a seller and a provider before
9 we even sign up, just start talking business,
10 because somebody has to be a seller.

11 MS. EULER: Right.

12 MR. KRAUS: Right. Somebody sold the
13 contract.

14 MS. RUSSELL: So, we're not.

15 MR. SPEAKS: Well, what he was wanting
16 to avoid was having Homesteaders --

17 MS. RUSSELL: Yeah.

18 MR. SPEAKS: -- fall under the control
19 of the State Board in Missouri.

20 MS. RUSSELL: They can be a seller if
21 they're going to go out and bypass the funeral
22 homes and use --

23 MR. SPEAKS: Right. And they don't --
24 to my knowledge, they don't do that.

25 MS. RUSSELL: Yeah. So, no. They

1 don't have to.

2 MR. SPEAKS: He just wanted to make
3 sure that they didn't suddenly find themselves
4 out of compliance.

5 MS. RUSSELL: Right. Got you.

6 MR. SPEAKS: When they hadn't intended
7 to.

8 MS. EULER: Mark, do you have anything
9 to add?

10 MR. SPEAKS: Is that fair, Ann?

11 MS. WARREN: Yeah. Absolutely. Thank
12 you.

13 MR. STAHLHUTH: Yeah. That sounds
14 right that they could be if they wanted to,
15 but they don't really have to be because they
16 are a funding mechanism. On the other hand,
17 the point that there is going to be an
18 intersection of the preneed-seller regulation
19 and insurance regulation, does that person who
20 is doing the selling of the preneed contract
21 is likely to also need an insurance-producer's
22 license when they --

23 MS. RUSSELL: Correct.

24 MR. STAHLHUTH: -- because they're
25 selling both.

1 MS. RUSSELL: Correct.

2 MS. EULER: Right.

3 MS. RUSSELL: Well, in order to sell an
4 insurance funded preneed contract, you have to
5 have an insurance-producer license, so it all
6 goes hand in hand, yes.

7 MS. WARREN: Right. I think that the
8 idea is to not make it mandatory that every
9 insurance company become a funeral director.

10 MS. EULER: Right. Right.

11 MS. WARREN: Make sure that we don't
12 create that inadvertently in the rule-making.

13 MS. EULER: But there needs to be a
14 preneed seller involved with every
15 insurance-funded preneed contract.

16 MS. RUSSELL: And that's usually the
17 funeral home.

18 MS. EULER: Right.

19 MR. OTTO: But not always is the
20 problem.

21 MR. STAHLHUTH: (Inaudible.)

22 MR. SPEAKS: Not always. There just
23 has to be one.

24 MS. RUSSELL: There just has to be
25 one. Thank you.

1 MS. EULER: Right. Because,
2 currently, that's not -- I mean, this is a big
3 change in the law.

4 MR. McCULLOCH: Typically, they would
5 be -- he would be, like, the third party and
6 you should be a seller.

7 MS. RUSSELL: Pardon? Say that again.

8 MR. McCULLOCH: Typically, you would
9 be, like, the third-party seller like the
10 preneed and you should be a seller.

11 MS. RUSSELL: No.

12 MR. McCULLOCH: Why not?

13 MS. RUSSELL. We are more like a
14 fiduciary. We're the funding mechanism.
15 We're not the -- we're a funding mechanism.

16 MR. McCULLOCH: So am I. So am I.

17 MS. RUSSELL: No. Your trust is your
18 funding mechanism.

19 MR. McCULLOCH: Yeah, but I'm the
20 seller, and you should have to be the seller.

21 MS. RUSSELL: Well, we don't sell. The
22 funeral home is the seller.

23 MR. McCULLOCH: You're out there
24 selling. You have people out there selling --
25 (inaudible) -- just like I do.

1 MS. RUSSELL: No, we don't have
2 independent agents like you're talking about.

3 MR. McCULLOCH: The funeral home is
4 your independent agent.

5 MS. RUSSELL: John, I understand where
6 you're coming from and if you call insurance
7 companies third-party sellers, fine, but
8 that's not my definition of a third-party
9 seller.

10 MS. EULER: Okay. Here is the
11 question: Do we need a rule that says --
12 that clarifies that the law now is that for
13 selling insurance from the contract, there
14 needs to be a seller just like there is for
15 everything else? Do the insurance companies --

16 MR. KRAUS: That's in the law.

17 MS. RUSSELL: I think it's clear.

18 MS. EULER: Okay.

19 MS. RUSSELL: I think it's been clear
20 forever on 436 that a preneed contract can't
21 be sold in Missouri without a seller's
22 license. I don't now how much clearer you can
23 be on that.

24 MS. EULER: Okay. Ann?

25 MS. WARREN: I think that the law is

1 clear, we shouldn't rewrite a law.

2 MS. EULER: Okay. All right.

3 CHAIRMAN: So, hypothetically, an
4 insurance company goes out and just starts
5 selling preneed contracts, then we have the
6 authority to go say --

7 MS. RUSSELL: Yes.

8 CHAIRMAN: -- you have to have a
9 seller's license, you can't do this?

10 MS. EULER: Right.

11 MR. SPEAKS: Correct.

12 MS. EULER: Or else you need to --

13 CHAIRMAN: Well, that's my
14 interpretation, but I just want to clarify for
15 myself.

16 MS. RUSSELL: Yes.

17 CHAIRMAN: So, is there something that
18 we're missing, and I'm getting the idea
19 everything is fine.

20 MS. EULER: I don't think so.

21 CHAIRMAN: Everybody agree with that?

22 MS. WARREN: Well, the only thing that
23 I'm reading what he's written here:
24 Insurance-funded preneed contracts need not
25 comply with those sections that specifically

1 deal with trust-funded and
2 joint-account-funded preneed funeral
3 contracts. Now, did what we say just now
4 comport with what this blurb is? Does anybody
5 see that there is any disagreement between
6 those two? I don't see that there is any.

7 MS. EULER: No.

8 MS. WARREN: Just wanted to make sure.
9 Okay.

10 MS. EULER: Okay.

11 MS. WARREN: I don't see a problem.

12 MR. WESTBY: Well, I have a question
13 on that. If I understand what she just read
14 here, then why are you creating a thing where
15 these insurance folks have got to have all
16 that about trusts and stuff that they don't
17 sell in the contract? Why do they have to
18 have that?

19 MS. EULER: That's what we were just
20 talking about.

21 MR. WESTBY: I know, but why --

22 MS. EULER: We're going to address
23 that in rule.

24 MR. WESTBY: Okay.

25 MS. DUNN: Who needs the Mark Warren

1 comments?

2 MS. RUSSELL: She does. Oh, you got
3 one.

4 (Several people talking simultaneously.)

5 CHAIRMAN: Okay.

6 MR. KRAUS: All right. The next one
7 on the second page of that same handout is all
8 insurance premiums shall be sent directly from
9 the policy owner to the insurance company. I
10 think we've talked about that already and
11 addressed that issue. I think --

12 MS. RUSSELL: On that, I think if
13 you're going to do the rule, you're going to
14 -- that's the question I think Mark was asking
15 about that if we -- the funeral home, the
16 seller charges the administrative fee or
17 State-audit fee that they call it, the \$2
18 right now for a contract fee, that that
19 doesn't have to go to the insurance company
20 because the insurance companies don't want
21 that \$2 and because they're not a seller, so
22 to speak.

23 MS. EULER: Right. Right.

24 MS. RUSSELL: Okay. That was --

25 MS. EULER: We may want to clarify

1 that one more.

2 MS. RUSSELL: Yeah. That one has to
3 probably be the clarification point.

4 MS. EULER: Okay.

5 MR. McCULLOCH: And you'll make sure
6 that will be the same thing for the trustees
7 then?

8 UNIDENTIFIED: Yeah. The same --
9 (inaudible.)

10 MS. EULER: We'll look at that.

11 MR. McCULLOCH: Because they don't
12 want to be the seller, either. The same call;
13 right?

14 MS. EULER: We will look at that.

15 MR. McCULLOCH: The same call and
16 we'll vote on it.

17 MS. EULER: Okay.

18 MR. KRAUS: Okay. 457(8), sub 2. Is
19 there an 8, sub two?

20 MR. FRAKER: There's a 7, sub 2.

21 MR. KRAUS: Well, at any rate, the
22 third one. Seller should not be named as
23 beneficiary or assignee. We need to protect
24 freedom of choice of consumer and only allow
25 funeral homes to be named assignees. Neither

1 providers nor sellers shall be named as
2 beneficiaries as it allows them to receive
3 death benefits whether they perform services
4 or not. I'm not sure what --

5 MS. EULER: I understand what he's
6 saying.

7 MR. OTTO: Where are we at?

8 MR. KRAUS: I think that's looking at
9 -- I think it's 450, sub 7, sub 2.

10 MR. STALTER: Well, actually, it's the
11 next page.

12 MS. EULER: Yeah, it's on the next
13 page.

14 MR. KRAUS: It's on the top of the
15 next page.

16 MS. EULER: The way the law is set up
17 is that the idea was that there would be a
18 seller, and the seller is obligated to pay the
19 provider. And when the seller gets the money,
20 whether it's from insurance, joint account, or
21 trust, that regardless of the funding source,
22 there is still the seller, and the seller is
23 obligated to pay the provider. So, if the
24 seller -- it would be appropriate for the
25 seller to be the beneficiary of the policy

1 because the seller is obligated to pay the
2 provider. So, the money goes to the seller
3 and the seller pays the provider, and, yes,
4 there is the possibility for the provider and
5 seller to receive death benefits whether they
6 perform services or not. And maybe if we put
7 something in rule that says sellers who
8 receive the money, you know, shall only be
9 used -- or shall be used to pay the provider
10 or something to clarify that.

11 MR. STAHLHUTH: That would be -- you
12 could justify that as consistent with the
13 requirements that overages get paid to the
14 consumer because, in effect, there's an
15 overage of the whole amount.

16 MS. EULER: Right. That's true.
17 That's a good idea. You're looking at me with
18 glazed eyes, Martin. Do you understand what
19 I'm saying?

20 CHAIRMAN: I understand. But I don't
21 -- the overage thought, I didn't follow that
22 one.

23 MS. EULER: So that the seller's -- if
24 the preneed is for \$10,000 for a full service,
25 by the time of death, for whatever reason, it

1 only costs \$1,000, then the \$9,000 legally
2 belongs to the seller.

3 CHAIRMAN: Right.

4 MS. EULER: And that's an unjust
5 enrichment. And so, there's another provision
6 in the statute that says that overage is paid
7 either to the estate if the person was on
8 public assistant, or to the estate.

9 CHAIRMAN: Sure.

10 MS. RUSSELL: Only on nonguaranteed
11 contracts.

12 MS. EULER: Right. Right.

13 MS. RUSSELL: Only on nonguaranteed.

14 MS. EULER: So -- yeah. But -- so,
15 and that's what Mark is talking about.

16 CHAIRMAN: Okay.

17 MR. STAHLHUTH: In effect, in the
18 situation where there is no services provided,
19 what you have is overage of the entire amount
20 of the life-insurance policy.

21 MS. EULER: Right. Right.

22 MR. STAHLHUTH: So, that's why --
23 that's how you justify the rule that they have
24 to pay it the same way.

25 MS. EULER: Right. Right. Right.

1 CHAIRMAN: I'm with you.

2 MS. EULER: And that's consistent with
3 the flow of the statute.

4 CHAIRMAN: Do we have to do anything?

5 MR. McCULLOCH: I agree.

6 MR. REINHARD: I agree.

7 CHAIRMAN: All right. That's a rule.

8 MR. KRAUS: All right. The last one
9 on there is --

10 (Several people talking simultaneously.)

11 MR. KRAUS: -- that refers to -- 8.

12 The State of Missouri receiving excess
13 proceeds as stated in statutes violates policy
14 language. Prior to a person going on
15 Medicaid, they name State of Missouri as
16 beneficiary. Anything else would violate
17 insurance-policy language.

18 MS. RUSSELL: May I? The owner of the
19 policy of the assignment is to the funeral
20 home, it's up to the funeral home to send that
21 excess money to public assistance -- you know,
22 to the State, not the insurance company.
23 That's not their duty.

24 MS. EULER: That's correct.

25 MS. RUSSELL: It would be that person.

1 So, I think Mark is, on this one, concerned
2 about an issue that doesn't affect the
3 insurance company. Do you agree with that?

4 MR. STAHLHUTH: That's the way I read
5 it, too --

6 MS. RUSSELL: Yeah.

7 MR. STAHLHUTH: -- is that the
8 insurance company is going to be unaffected by
9 any of this.

10 MS. RUSSELL: Exactly.

11 MR. STAHLHUTH: Because they're going
12 to pay the --

13 MR. OTTO: Except I will note certain
14 insurance companies don't have a problem.
15 They view themselves as the interpreters and
16 forces of 436. A big rock on the side of
17 Gibraltar comes to mind. And so, to the
18 extent that we can clear things up. For
19 example, there's a problem with a certain
20 insurance company that will not allow the
21 consumer to put a funeral home as the
22 beneficiary because their interpretation of
23 436 says you can't do that. And our point is
24 that, excuse me, that's between -- that's none
25 of your business, insurance company, you know.

1 If the State of Missouri has a problem with
2 that, that's the State of Missouri's problem,
3 but the insurance company doesn't want you to
4 do that. So, to the extent that we might be
5 able to clarify some things in rules that I
6 can point to insurance companies saying --
7 and, of course, some of these insurance
8 companies in the past, historically, have
9 wanted the advantages of being the seller with
10 none of the duties of being a seller, you know.

11 MS. EULER: Yeah.

12 MR. OTTO: They want all the income,
13 they way this, they want that, they want that,
14 but they don't want to have to do this, they
15 don't -- so, sometimes it gets confusing as to
16 whether they're speaking with their
17 I-want-to-be-a-seller hat on or
18 I-don't-want-to-be-a-seller hat on. So, it
19 might not hurt to clarify some of this in
20 regulations for us to use when we're going --

21 MS. EULER: Give us an example.

22 MR. OTTO: Well, to make it clear.
23 Again, that's a good one right off the top,
24 that the consumer has the right to make --
25 make it absolutely clear the consumer has the

1 right to name a funeral home as the
2 beneficiary or the seller as a beneficiary or
3 whatever. You think that's in there, but
4 something that makes it absolutely clear that
5 they can do that. And that the -- like this
6 one here, we'll just, you know, make it
7 absolutely clear that it's the -- the
8 insurance company shall pay the whole amount
9 to the seller.

10 MS. EULER: Okay.

11 MR. OTTO: Okay. Period. You know,
12 if the -- and, again, I'm assuming the seller
13 is the beneficiary or the assignee or
14 something or whatever, but the insurance
15 company shall pay the amount to the seller,
16 and it's up to the seller then to pay the
17 overage to the State of Missouri or whatever
18 the situation is.

19 MS. WARREN: Mark, it just seems so
20 simple that in all life-insurance policies you
21 have to name your primary beneficiary, your
22 contingent beneficiaries, in the order in
23 which they're to receive, and that's the
24 direction that is given to the insurance
25 company at the time or at any subsequent time

1 that they make a change in beneficiary, so
2 that's just a written direction so the company
3 knows where to pay it, and I think that that's
4 where this comment is going. You have to give
5 us written direction. We can't just -- the
6 insurance company can't just -- (inaudible) --
7 on its own, start handing money out, because
8 what a company has to do is do an --
9 (inaudible.) And I think what we're trying to
10 do is avoid that. I'm just kind of assuming
11 that at this point. But you can't make
12 requirements to a contract that are not in the
13 contract. So, the insurance company is going
14 to have to answer the Department of Insurance.
15 If the contract says pay A and, if not A, pay
16 B, but then we have a rule that says pay C,
17 then the company is going to -- if they -- if
18 the company pays what the rules says, then
19 they're violating the written contract. So, I
20 think what Mark Warren is trying to do here is
21 say they've got to put it in the contract who
22 the payee should be so that there is direction
23 who the contingent beneficiaries are. I mean,
24 you can't -- no? Am I way off? Mark is
25 shaking his head.

1 MR. STAHLHUTH: Well, it looks to me
2 that lines 37 through 44 in the bill work
3 together. I mean, the insurance-funded
4 preneed contract shall be valid and
5 enforceable only if the seller or provider is
6 named as the beneficiary or assignee, so --

7 MS. WARREN: See, I was reading 40
8 through 44.

9 MR. STAHLHUTH: Right. And it ties
10 together. If the proceeds of the
11 life-insurance policy exceed the actual cost,
12 well, just right up above, the beneficiary or
13 assignee of the life-insurance policy funding
14 the contract is the seller or provider. So,
15 they're the ones who are going to get these
16 proceeds. And so, 40 through 44 really
17 imposes no obligation whatsoever on the
18 insurance company. It's all on the seller or
19 provider because they're the ones who are the
20 assignee or beneficiary of that insurance
21 policy.

22 MS. EULER: Is what you're saying is
23 that -- I'll ask this to you and also to Don.
24 And I'll try not to bruise Brad's knees. If
25 the life-insurance policy is for \$20,000, the

1 funeral costs \$7,000, does the life insurance
2 always pay out \$20,000 or do they just pay the
3 actual cost of the funeral, \$7,000, and then
4 any overage they pay to the secondary
5 beneficiary?

6 MS. WARREN: They pay the full amount
7 under the contract. Whatever the contract
8 dictates, the insurance company has to --

9 MS. EULER: But which contract?

10 MS. WARREN: The life-insurance
11 contract.

12 MR. OTTO: But I've had that exact
13 conversation with some insurance companies
14 where they say we think under Missouri law,
15 the funeral home should only get the \$7,000,
16 and the other \$13,000 should go to the family.

17 MS. EULER: I have heard that, as well.

18 MR. OTTO: And we say no --

19 MR. STAHLHUTH: August 28th, that will
20 change.

21 MR. McCULLOCH: We have that problem
22 -- only pay the funeral-home amount -- the
23 funeral-charge amount.

24 MR. OTTO: Yeah. And the other
25 problem I've had is slightly different, but

1 the same attitude, is a consumer has sent in a
2 change of beneficiary to the funeral home.
3 And then the company says, well, we don't --
4 under -- we don't think that they have a valid
5 preneed contract with that funeral home,
6 therefore, the funeral home cannot be a
7 beneficiary. And we say that's up to the
8 State Board to decide whether or not there's a
9 valid preneed contract. It's your job to do
10 what your customer says.

11 MS. WARREN: So, what's the insurance
12 company say they do with the rest of the
13 money? Do they keep it? They're not saying
14 that, are they?

15 MR. OTTO: Well, if I could prove it,
16 I'd have a great lawsuit, but I think they
17 just really want to hold onto the money as
18 long as they can before they have to write a
19 check.

20 MS. EULER: What I have seen is like
21 what Don was saying, is the insurance
22 companies want to act like the preneed seller
23 and that they require a statement of goods and
24 services provided, and then they pay on that,
25 and it's not a \$20,000 life-insurance policy.

1 It's a cost-of-the-goods-and-service
2 life-insurance policy.

3 MS. WARREN: So, the policy -- the
4 underlying policy is not -- (inaudible.) The
5 finite amount is for whatever it is that the
6 services cost at the time?

7 MS. EULER: I don't know.

8 MS. WARREN: I would think the
9 language would control --

10 MR. STAHLHUTH: They may be -- and the
11 insurance companies may be -- if they have a
12 legitimate excuse, it might be that the
13 insurance company just has its insurance
14 policy, and at the time of the funeral, they
15 get some assignment to the funeral home. And
16 so, at that time, it's an assignment as their
17 interest may appear so that, at that time,
18 they're going to be wanting a statement of
19 goods and services.

20 MS. WARREN: (Inaudible.)

21 MR. STAHLHUTH: That would be the
22 legitimate way that an insurance company might
23 get confused over these. It comes to a
24 preneed contract, there shouldn't be that
25 confusion, at least not after August 28th,

1 because here in the policy, they're going to
2 be named as the beneficiary or assignee of --
3 the beneficiary or the assignee of the
4 life-insurance policy, so they're not going to
5 be any confusion from the insurance-company's
6 standpoint. They pay pursuant to what their
7 own policy assignment was or beneficiary
8 designation was. And so, any overages aren't
9 going to be the problem of the insurance
10 company, it's going to be the problem of the
11 seller or the provider.

12 MS. RUSSELL: Exactly.

13 MR. OTTO: I've had one that said
14 we'll send -- of course, the funeral home was
15 the only beneficiary on the policy; that was
16 it -- only beneficiary. And they said, well,
17 they wanted the statement of goods and
18 services, which was not -- which was, like,
19 you know, \$7,000 for a \$20,000 policy. They
20 said, well, we're going to put -- on the
21 check, we're going to put the funeral home's
22 name, we're going to put the State of
23 Missouri's name, and we're going to put the
24 family's name, and then you go around and get
25 the signatures and do all that and like that.

1 Well, what does that do? That keeps the money
2 -- even if you can get all those signatures,
3 that keeps the money in the
4 insurance-company's bank account to earn them
5 interest for another three months while you're
6 dealing with that mess.

7 MS. RUSSELL: Well, and I think
8 Department of Insurance would be glad to hear
9 these things, you know, having to --

10 MR. STAHLHUTH: Yeah. I mean --

11 MS. RUSSELL: Because it's a
12 regulatory thing with the Department of
13 Insurance. When you've got an insurance
14 company that's blatantly not following
15 insurance laws by paying what the assignment
16 of proceeds says, that's an insurance issue,
17 an insurance regulatory issue.

18 MR. STAHLHUTH: Right.

19 MS. WARREN: And I think what this is
20 clearly saying here is, like, make it clear
21 that if Medicaid -- and it's MO HealthNet now
22 --

23 MS. EULER: Yeah.

24 MS. WARREN: -- has to receive -- I
25 didn't type this.

1 MS. EULER: We all know what it means.

2 MS. WARREN: Yeah. Everybody knows.

3 -- say so. If you are a beneficiary of MO
4 HealthNet, then you should make sure that your
5 policy -- your insurance company knows about
6 it and put them as a contingent beneficiary.

7 MR. STAHLHUTH: No. I think they net
8 -- this is a preneed regulatory law and not an
9 insurance regulatory law.

10 MS. RUSSELL: Right.

11 MR. STAHLHUTH: So, this compliance
12 with subsection 8 or -- and this comment is
13 going to be the requirement that's imposed
14 upon the seller who receives the proceeds or
15 the provider who receives the life-insurance
16 proceeds. The insurance company, they're not
17 going to have to do anything except look at
18 what their beneficiary designation or what
19 their assignment designation is and they cut
20 the check that way. And then whatever happens
21 after that, if the seller or provider goofs it
22 up, they're going to have to answer to the
23 Board.

24 MS. WARREN: Right. And if it's
25 unclear, an interpleader could affirm, but

1 it's faster, probably, to write the check and
2 put a couple people on it -- I mean, and that
3 happens all the time when you settle, like, a
4 car-accident case. The check is written to
5 the law firm and to the person that's to
6 receive the money, and then that money gets
7 put in a trust account of the firm and then
8 it's divided up however it's supposed to be
9 and that's done right away. I don't know why
10 it will take three months to do that.

11 Usually, everybody is eager to get their money
12 right away. They're real fast on getting
13 signatures unless you've got a lost person.

14 MR. STAHLHUTH: Well, that would be,
15 like, for a liability insurance. But in a
16 life-insurance company --

17 (Several people talking simultaneously.)

18 MR. OTTO: Well, now, I mean, that's
19 different than the beneficiary. That's
20 different. If there's a beneficiary on the
21 life-insurance policy, you pay the beneficiary.

22 MR. STAHLHUTH: Right.

23 MR. OTTO: And it's not the insurance-
24 company's job to determine, oh, some of this
25 money is excess, it should go here, it should

1 go there. That's the seller's job, not the
2 insurance company.

3 MR. STAHLHUTH: Right.

4 MR. OTTO: But I'd like to talk to you
5 at some point in time about Prudential.

6 MS. EULER: But not to mention any
7 names.

8 (Several people talking simultaneously.)

9 MR. OTTO: Not to mention any names.
10 I didn't say anything. I just want to talk
11 about Prudential. Darlene is nodding her
12 head. She knows exactly what I'm talking
13 about.

14 MS. WARREN: Angela Nelson; right?
15 Call her. But I guess we just want to make
16 sure that for our clients, they want to make
17 sure that they're not forced to do something
18 that's contrary to the written contract.

19 MR. STAHLHUTH: They won't be.

20 MS. RUSSELL: No.

21 MS. WARREN: That's all that is.

22 MR. McCULLOCH: I don't think it does.

23 MR. STAHLHUTH: Your client will be
24 fine.

25 MS. WARREN: Good.

1 MR. SPEAKS: Trust us.

2 (Several people talking simultaneously.)

3 CHAIRMAN: I'm having a harder part
4 discerning the \$20,000 life-insurance policy
5 for the \$7,000 preneed.

6 MS. EULER: It's just hypothetical.

7 MR. SPEAKS: Well, we do things
8 differently in the city, Martin.

9 MS. WARREN: Well, maybe I'm ignorant.
10 I keep thinking, well, what if they decided
11 just to do a cremation? I mean, that's a lot
12 cheaper than a full-fledged funeral; right?

13 MS. EULER: It depends on where you go.

14 MS. RUSSELL: That happens, and then
15 you have -- (inaudible.)

16 (Several people talking simultaneously.)

17 CHAIRMAN: The best part of that
18 answer -- the best part of that answer is when
19 they come in and you hope it's irrevocable and
20 you say, fine, but I'm mailing the proceeds to
21 the State.

22 (Several people talking simultaneously.)

23 CHAIRMAN: You really want that
24 cremation that bad, huh?

25 MS. WARREN: Yeah. That would really

1 -- yeah. Truly. (Inaudible.) I didn't think
2 about that.

3 (Several people talking simultaneously.)

4 MR. KRAUS: All right. So, that's --

5 MR. STAHLHUTH: We need to go back to
6 the --

7 MR. KRAUS: Comment 60.

8 MR. STAHLHUTH: Yeah. Now, you're
9 back to the original document.

10 MR. KRAUS: Yes. And I have one more
11 there. Set out that receipt by agent equals
12 receipt by the seller. Do we need to set
13 that out in a rule?

14 MR. WESTBY: Where are we at now?

15 MR. KRAUS: We're at K60, one page
16 back on Section 436.450. I think that's with
17 regard to receipt of payments.

18 MS. EULER: Okay. I'm hearing no
19 surge of, yes, we need a rule on that. Mark?

20 CHAIRMAN: Anybody?

21 MR. KRAUS: (Inaudible.)

22 MR. STAHLHUTH: I don't -- I think
23 this is addressing receipts by the agent of
24 the seller.

25 MS. EULER: Right.

1 MR. KRAUS: Right.

2 MR. STAHLHUTH: And I guess that would
3 be up to the Board as to whether they went to
4 -- it would be consistent with what's in the
5 statute already.

6 MR. KRAUS: Yeah.

7 MS. EULER: Yeah. Do you have
8 anything else you would like the Board to
9 consider for rules that would assist the
10 Division of Insurance in doing their job under
11 this section?

12 MR. STAHLHUTH: I didn't get any
13 instruction from anybody that we needed any,
14 but it seems pretty clear, under this
15 regulatory scheme, that the insurance
16 companies really aren't willing to be
17 regulated by this preneed law.

18 MS. RUSSELL: Correct.

19 MS. EULER: Right.

20 MR. STAHLHUTH: Although there might be
21 something or section at the sales point with
22 the producers -- the insurance producers and
23 the preneed agents. So, we didn't really see
24 anything that we would need.

25 MS. EULER: Okay.

1 MR. STAHLHUTH: Anything else that we
2 might need would be a matter of just internal
3 Board workings with that examination
4 provision, but that's not a thing that you
5 need rules over.

6 MS. EULER: Right. Okay.

7 MR. KRAUS: All right.

8 MS. EULER: And do we need Mark -- I
9 mean, Mark, you're welcome to stay, but do we
10 need him for anything else?

11 CHAIRMAN: Anybody got any more direct
12 questions to Department of Insurance?

13 MS. EULER: If you want to stay, you
14 can, but --

15 MR. KRAUS: Stay and share in the joy.

16 MR. STAHLHUTH: I feel like I probably
17 should for that fried chicken that you all --
18 but I think they are expecting me back at some
19 point this afternoon.

20 MR. KRAUS: All right. Thank you.

21 MS. EULER: Thank you, Mark. We
22 appreciate your time.

23 MS. DUNN: Thanks, Mark.

24 CHAIRMAN: Thank you.

25 MR. KRAUS: Let's see. Do you want to

1 go back to where we were?

2 MS. EULER: Okay.

3 MR. KRAUS: And that takes us back to
4 436.430, the second page. Comment K41.

5 (Several people talking simultaneously.)

6 MR. KRAUS: It looks like that is
7 talking about some control of financial
8 institutions.

9 MS. EULER: What comment are we on?

10 MR. REINHARD: Forty-one.

11 MR. KRAUS: Forty-one, and a
12 presumption that may be rebutted by showing to
13 the Board that control does not, in fact,
14 exist, and the comment was whether we want to
15 set out any procedures for showing that to the
16 Board.

17 MS. EULER: No, I don't think so.

18 MR. KRAUS: I don't think so, either.

19 CHAIRMAN: Legal says they don't think
20 so. Everybody agree?

21 MR. REINHARD: No.

22 (Several people talking simultaneously.)

23 MR. McCULLOCH: I agree.

24 MR. REINHARD: I agree.

25 MR. KRAUS: All right. Forty-two.

1 Should this fiduciary-review requirement be
2 imposed retroactively to existing trusts?

3 MS. EULER: It will not be applied
4 retroactively, but I believe that trustees
5 will need to review trust assets to insure
6 compliance.

7 MR. KRAUS: Going forward.

8 MS. EULER: Going forward.

9 MR. KRAUS: Even with regard to
10 contracts already in place.

11 MS. EULER: Uh-huh.

12 MR. STALTER: Trusts.

13 MR. KRAUS: I mean -- yeah. Trusts.

14 CHAIRMAN: Mr. Otto?

15 MR. OTTO: This one was designed for
16 in the event -- really, for a successor
17 trustee. So, there's a trust -- I mean, you
18 know, if you're, as a trustee, inherited a
19 trust that might not be in compliance, you're
20 not violating the law on day one.

21 MS. EULER: Right.

22 MR. OTTO: You've got time -- a
23 reasonable amount of time to look through it
24 and see if you can get it into compliance.

25 MS. EULER: Yes.

1 MR. KRAUS: All right. Any other
2 thoughts on that? Okay. Forty-three.
3 Expenses in establishing and administering a
4 preneed trust. Point of clarification, the
5 fiduciaries can recover their expense in
6 setting up new trusts compliant with Senate
7 Bill 1.

8 UNIDENTIFIED: I don't understand what
9 that comment would mean.

10 MR. STALTER: What it means is that
11 you have put down a new layer of oversight for
12 trustees. There's going to be an expense to
13 that. There was discussion last summer about
14 what a reasonable trustee's fee was, and so,
15 what we're saying here there's an expense for,
16 you know, for a bank to set up a new trust,
17 and that's part of what it can recover as part
18 of expense. I just wanted to clarify that
19 that -- before, we've had -- (inaudible) --
20 trustee's fee would be part of administering
21 a preneed trust, and depending on if this
22 language --

23 MR. SPEAKS: That word "all" addresses
24 that.

25 MR. STALTER: All expenses. But I

1 would say that, before, expenses for
2 establishing a trust wasn't really clear
3 whether that was a trustee's expense that
4 could be recovered. It's a new term in there,
5 so --

6 MS. EULER: So, is what you're asking
7 the Board to do is consider a rule --

8 MR. STALTER: No. I'm just saying I'm
9 putting out the issue and I think I've heard
10 enough already, so --

11 MS. EULER: Okay. (Inaudible.)

12 MR. KRAUS: Okay. That's right. Move
13 on. Okay. Forty-four. Is there a minimum
14 that the seller may pay -- must pay the
15 provider, connected to sub 10, I guess, there.
16 And that's just under the contract generally?

17 MS. EULER: I think that could be -- I
18 mean, if the Board wanted a rule on that, I
19 think we could do a rule on that.

20 MR. McCULLOCH: No, would be the
21 answer.

22 MS. EULER: Okay.

23 MR. McCULLOCH: They shouldn't get
24 into those agreements -- the Board. They
25 don't have anything to do with that. That's a

1 contractual thing between those two.

2 MS. EULER: Does everybody agree? Jim?

3 MR. REINHARD: I agree with John.

4 MS. EULER: Gary?

5 CHAIRMAN: Done deal.

6 MR. KRAUS: All right. Forty-five.

7 Language suggests that the seller/provider can
8 agree to -- how income may be divided. May a
9 seller who acts as its own provider
10 incorporate similar provisions in the preneed
11 contract that contemplate successor providers
12 who do not have a trust.

13 MR. STALTER: (Inaudible.) I'm
14 thinking along John's lines. In other words,
15 if you have a third-party seller, there's a
16 contractual agreement between what the
17 provider is going to get. You know, we've got
18 a seller/provider, the same entity, but we
19 have now provisions into this law about, you
20 know, portability. And what my question is:
21 If one of those portability provisions is that
22 the new provider could say just leave that
23 trust where it's at, now, can I then, as the
24 new seller, say here's really the arrangement
25 -- you know, some kind of a reasonable

1 arrangement, because it costs me to leave it
2 there.

3 MS. EULER: Yes.

4 MR. STALTER: And I can't force it out.

5 MS. EULER: Yes.

6 MR. STALTER: See my point?

7 MS. EULER: Yes.

8 MR. STALTER: Okay.

9 MS. EULER: One thing that I hope that
10 people will have a better understanding now is
11 that the Board issues one license. And when
12 you are licensed as a seller, you can sell for
13 your own funeral home and do your own thing,
14 or you can be what we call third-party sellers
15 now. It's one license. And there is no
16 distinction between third-party sellers and
17 individual funeral homes. So, if an
18 individual funeral home wants to be a
19 third-party seller for two other funeral homes
20 in their area, that seller's license
21 authorizes them to do that. So --

22 MR. STALTER: Yeah. But I'm taking it
23 one step further, is that I have no intent to
24 be a third-party seller.

25 MS. EULER: Right.

1 MR. STALTER: But by virtue of the
2 portability provisions --

3 MS. EULER: You may find yourself in
4 that situation.

5 MR. STALTER: That's right.

6 MS. EULER: Absolutely.

7 MR. STALTER: Yeah.

8 MR. KRAUS: All right. So, 46 then?

9 MS. BATEMAN: Wait. Can I ask one
10 thing?

11 CHAIRMAN: Yes.

12 MS. BATEMAN: On the insurance one we
13 just went over the example of you have a
14 \$20,000 contract, you only use \$7,000, what
15 happens to the other \$13,000. I don't think
16 that that's reflected anywhere on the trust
17 provisions, is it? Have I missed it? So,
18 what happens in that instance?

19 MS. RUSSELL: Are you talking about
20 irrevocability?

21 MS. EULER: I think --

22 MS. BATEMAN: In an irrevocable
23 contract. I'm not talking one that is for
24 Medicare purposes. So, you have excess money
25 at the time that you deliver the contract,

1 does the money go to the State, does it go to
2 the funeral home, to the seller, to whom?

3 MS. EULER: I believe there is a
4 provision on that, it's just somewhere else.

5 MR. SPEAKS: Growth goes to the
6 funeral home. That's the only way there would
7 be an excess is if there was earnings.

8 (Several people talking simultaneously.)

9 MS. EULER: And we call it income, we
10 don't call it gross.

11 MR. STALTER: I mean, a nonguaranteed
12 would be about the only situation.

13 MS. EULER: "Growth" is an NPS term.
14 We call it income.

15 MR. SPEAKS: Income, yeah. The
16 interest, the income goes to the funeral home.

17 MS. EULER: Yeah.

18 MS. BATEMAN: And depending on how
19 much is used at the time of need.

20 MS. RUSSELL: Except it has to be
21 guaranteed.

22 MR. SPEAKS: Yeah.

23 MS. RUSSELL: It has to be -- it can't
24 be a nonguaranteed.

25 MR. SPEAKS: Yeah. Yeah. If it was a

1 guaranteed --

2 MS. BATEMAN: Yeah.

3 MS. RUSSELL: It has to be a guaranteed
4 contract.

5 MR. SPEAKS: -- preneed contract.

6 MS. RUSSELL: Then the excess, I think
7 --

8 MR. SPEAKS: If it was nonguaranteed,
9 then it would go back to the consumer.

10 MS. RUSSELL: Exactly.

11 MS. EULER: Or to the State. Yes?

12 MR. OTTO: Does there need to be any
13 clarification in this paragraph that starts at
14 line 58 where there is no contract between the
15 seller and the provider because the seller and
16 the provider are the same entity?

17 MS. EULER: I think that's kind of --

18 MR. STALTER: I thought we addressed
19 that. I thought it was kind of clear.

20 MR. OTTO: When the seller and the
21 provider are the same entity, so there is no
22 contract between them, and this section says
23 the money --

24 MS. EULER: Well --

25 MR. OTTO: You know. I mean, I don't

1 know if it does, but --

2 MS. EULER: You know, that's not a bad
3 idea.

4 MR. McCULLOCH: I thought there had to
5 be a contract between --

6 MR. OTTO: Not if you're the same legal
7 entity.

8 MS. EULER: Not if they're the same
9 legal entity.

10 MR. McCULLOCH: Not if they're the
11 same?

12 MR. OTTO: Yeah. I mean, and nobody
13 wants -- you know, nobody is trying to stick
14 it to anybody here, but --

15 MR. KRAUS: Yeah. But that's talking
16 about the preneed contract, not the contract
17 between the seller and the provider.

18 MR. OTTO: You know, but there may not
19 be a contract between the seller and the
20 provider.

21 MR. KRAUS: Right. There doesn't have
22 to be if you're the same entity.

23 MR. OTTO: Yeah. Yeah.

24 MS. EULER: Uh-huh. Okay. We'll take
25 a look at that.

1 MS. BATEMAN: I mean, you know, the
2 legal --

3 MS. RUSSELL: I think it says
4 guaranteed --

5 MR. KRAUS: All right. Forty-six,
6 should the Board make a form regarding
7 certificate of performance -- sub 11?

8 MS. EULER: No.

9 CHAIRMAN: Everybody agree?

10 MR. FRAKER: No.

11 MR. SPEAKS: What was the answer? No?

12 CHAIRMAN: That's what I'm getting.

13 MS. DUNN: That was just Sharon.

14 MS. EULER: That's just me. I don't
15 have a vote.

16 MR. CHAIRMAN: Well, I saw two nos, so
17 it's just whether the Board creates the form
18 of this is the official certificate of
19 performance.

20 MS. EULER: I think that the sellers
21 are going to want to do their own.

22 (Numerous people answer yes.)

23 MR. McCULLOCH: I thought you guys
24 didn't want to get into that anyway because
25 you don't want to get -- if it's done

1 incorrectly and all that, so --

2 MS. EULER: Yeah. So, I say no.

3 CHAIRMAN: The answer is no.

4 MS. EULER: But I don't have a vote.

5 MR. STALTER: Let's take yours,
6 Sharon. And, really, the trustee -- and what
7 we want -- we'll want to have things covered
8 -- (inaudible.)

9 MS. EULER: Yeah.

10 MR. STALTER: And that's why I say --
11 (inaudible.) Okay.

12 MR. KRAUS: Now, there's an added
13 comment there about would the signing of an
14 at-need contract suffice and such contract
15 would be signed by both parties, and in such
16 contract, they agree to deliver the
17 merchandise and services for the beneficiary.

18 MS. EULER: I don't think that's our
19 call. I think it's up to the seller and the
20 trustee to decide what constitutes a
21 certificate of compliance.

22 MR. KRAUS: That's consistent.

23 MS. EULER: That meets the statutory
24 requirement.

25 CHAIRMAN: All right. So, that's just

1 (Chairman makes a noise).

2 MR. KRAUS: All right. Moving on.
3 Okay. Forty-seven. Will this section be
4 applied retroactively to pre '09 trusts? Sub
5 12.

6 MS. EULER: This section is almost
7 word for word what the current law says, so
8 that law hasn't changed.

9 MR. OTTO: I got it. The only
10 difference is instead of what you're entitled
11 to receive for the preneed contract, the
12 current law says are all deposits made into
13 the trust on that contract.

14 MS. EULER: And so --

15 MR. OTTO: And Brad can speak to how
16 enforceable this section is, anyway.

17 MS. EULER: Well, it's like the other
18 section. It's not applied retroactively.
19 However, if -- Don, I'm going to pick on you.
20 If MFT fails to make a payment on September
21 15th, then this law applies.

22 MR. OTTO: It doesn't matter to me.
23 It's just virtually identical to the current
24 law.

25 MS. EULER: Yeah. It's very similar.

1 MR. KRAUS: All right. Moving on then.
2 Forty-eight. Need to explain in a rule -- I
3 assume that looks like that's with regard to
4 the written statement of all deposits and as
5 to what that written statement is to consist
6 of. Do we need to spell that out?

7 CHAIRMAN: Just what that is?

8 MR. KRAUS: Right.

9 MS. EULER: Board, what do you think?
10 I don't --

11 MR. ZELL: Do you get to write out the
12 numbers instead of typing them out? What do
13 you mean?

14 MR. KRAUS: Well, I mean, do you list
15 a total? Do you list individual lines? Do
16 you -- I mean, there's a lot of variations you
17 could have in the written statement of all
18 deposits.

19 MS. EULER: We want it to show the
20 dates the deposits were made or do we want to
21 --

22 MR. KRAUS: Yeah. Individual ones,
23 totals or --

24 MS. EULER: Do we want it verified by
25 the bank or the trustee?

1 MR. STALTER: Oh, no. Let's not go
2 there.

3 MR. McCULLOCH: I think you may have
4 another problem there. How is the trustee
5 going to figure out what the interest is on a
6 commingled trust for any one individual?

7 MR. OTTO: You're going to have to do
8 that on your -- you're going to have to do
9 that.

10 MR. McCULLOCH: Don't?

11 MR. OTTO: You're going to have to, I
12 think, under the new law.

13 MR. STALTER: Yeah. I think you're
14 going to have to, too.

15 MR. McCULLOCH: How are you going to
16 do it? That's what I'm asking.

17 MR. OTTO: We've got a computer
18 program that does it.

19 (Several people talking simultaneously.)

20 MR. McCULLOCH: Are you sure?

21 MR. OTTO: Yeah.

22 MR. KRAUS: That's an accounting
23 question.

24 MR. McCULLOCH: And we discussed that
25 before --

1 MS. BATEMAN: Not per customer.

2 MR. OTTO: Yeah. Ours does.

3 MR. McCULLOCH: So, you get a \$50
4 payment coming in. I need to see how that
5 works.

6 MS. BATEMAN: In some cases, it
7 doesn't come out.

8 MR. OTTO: You're going to have to.
9 Because we'll take a look at your annual
10 reporting and stuff.

11 MR. REINHARD: He'll sell you a copy
12 of his program.

13 MR. OTTO: Actually, I don't own it.
14 I rent it, but --

15 MR. REINHARD: Oh.

16 MR. McCULLOCH: So, I'll give you an
17 example. Ms. Jones gives your company 50
18 bucks.

19 MR. OTTO: Yeah.

20 MR. McCULLOCH: And you put that in a
21 mutual fund that has, let's say, 100
22 investments.

23 MR. OTTO: Right.

24 MR. McCULLOCH: Next month, they give
25 you another \$50, you put that into a different

1 mutual fund and they've got \$50 invested. The
2 next month, they give you \$50. That mutual
3 fund has \$30. And your program is going to
4 track all that?

5 MR. OTTO: Well, it goes into one --

6 MR. McCULLOCH: Oh, there's the
7 problem right there.

8 MR. OTTO: No. Well, no. I mean, we
9 have two options where they can put the money,
10 a mutual fund or --

11 MR. McCULLOCH: Yeah. But what if it
12 goes that way? That's what I'm saying. These
13 payments are going to come in over the next
14 ten years, possibly.

15 MR. OTTO: Right.

16 MR. McCULLOCH: Okay. And they're
17 going to be in all these different mutual
18 funds. How are you going to keep track of
19 that?

20 MR. OTTO: Talk to Mr. Hamm at
21 Impressive Technologies, because that's what
22 we do.

23 MR. McCULLOCH: I don't think they can
24 do it.

25 MR. OTTO: Because, you know, right

1 now, if you get on at 3:00 in the morning and
2 log on to your account, you can get Mrs. Jones
3 and see exactly -- if she died today, exactly
4 how much would be paid off for that, and it's
5 broken down in deposits made, realized income,
6 unrealized income, expenses.

7 MR. McCULLOCH: Yeah. You've got that
8 problem, too, realized and unrealized.

9 MR. OTTO: Yeah. That's on our report.

10 MR. McCULLOCH: Okay. So, you -- she
11 gets her report and it says that the
12 unrealized gains for that moment in time, and
13 then, you know, that's going to change, too.

14 MR. OTTO: Yeah. It changes daily,
15 arguably, yeah.

16 MR. McCULLOCH: Yes. Yeah.

17 MR. OTTO: Now, we don't update the --
18 the system gets updated once a month, I
19 believe. But, yeah. But --

20 MR. McCULLOCH: This is really poor.
21 It's in there, but it shouldn't have been in
22 there because you're going to cause, I think
23 -- I don't know if you feel the same way --

24 MR. STALTER: I always have a problem
25 with just saying interest or dividends or so

1 forth. I mean, there's a way to make it work
2 for income, you know. Then it also is, how
3 quickly do you have to have it updated, you
4 know? The cost -- I mean, for each individual
5 contract, we don't report principal. I mean,
6 basically, you've got deposit your payments,
7 but there should be some kind of an
8 allocation, you know, and you have to decide
9 how quickly it has to be done, but --

10 MS. EULER: Well, and those are all
11 things that we could do by rule.

12 MR. McCULLOCH: It says 30 days,
13 doesn't it, right here?

14 MR. STALTER: That's what I --

15 MR. McCULLOCH: Within 30 days after
16 receipt of the purchase --

17 MR. OTTO: Well, that's 30 days after
18 they send you the request -- the consumer --
19 you have to give them a report. It doesn't
20 say how many -- how often you have to update
21 your report, and that could -- I don't think
22 that's in the business of a rule. That's --
23 you know. Some people do it quarterly, some
24 people do it semiannually, some -- you know.
25 It may depend what you're investing in even.

1 MS. EULER: And it would seem to me
2 that we want the report to say what date it
3 was as of. That might be something to put in
4 the rule.

5 MR. OTTO: That makes sense. That
6 makes sense.

7 CHAIRMAN: So, what we're actually
8 deciding here is 048 says may be explained in
9 rule. We're just -- we're talking about what
10 is reported or what is given back in that
11 written statement?

12 MS. EULER: Well, do we want to do a
13 rule that says what that written statement
14 should contain?

15 CHAIRMAN: Okay.

16 MR. FRAKER: Yes.

17 MR. SPEAKS: Well, it says what it
18 should contain. A written statement of
19 deposits including principal and interest paid
20 to date.

21 MR. KRAUS: Right.

22 MR. McCULLOCH: (Inaudible.)

23 MR. STALTER: But not principal. I
24 mean --

25 MR. KRAUS: Is that one amount or is

1 that a whole bunch of different amounts?

2 MR. STALTER: Well, what the consumer
3 will want to see is, okay, how many deposits
4 have been made to this account, and the other
5 is what is your accrued income.

6 MS. EULER: Do they want to see, like,
7 a bank statement?

8 MR. SPEAKS: In other words, they know
9 they've made 50 payments. The report should
10 show 50 payments and the interest.

11 MR. KRAUS: Well, I guess, where I was
12 going is, if I want to do the bare minimum
13 that I can scrape by with under this statute,
14 then can I just send in a written statement
15 that includes a total that reflects all
16 deposits made to such trusts and the date?

17 MR. SPEAKS: Yeah. Because it says
18 included.

19 MS. EULER: I have deposited \$5,000 to
20 your account.

21 MS. BATEMAN: Why wouldn't you let the
22 customer decide how much information they want,
23 because I know we get calls, but they just
24 want to know I have \$3,000, they don't care
25 about the timing of the payments. And then

1 they call you back and say, hey, I saw that I
2 have \$3,000, but I want to know on each one
3 of the payments.

4 MR. SPEAKS: Right.

5 MS. BATEMAN: I just think it's
6 spending too much to be saying I want it by
7 payment or not want -- it may not be what --

8 (Several people talking simultaneously.)

9 MR. REINHARD: I'd do the minimum.

10 MS. EULER: We don't have to do a
11 rule, but we could do a rule if you want a
12 rule.

13 MR. KRAUS: Yeah. You don't have to
14 do one. You could not do one and see what
15 people submit, and if it's not useful, then
16 you could do a rule then.

17 CHAIRMAN: Well, they have to give it
18 to them, regardless. I mean, it says so right
19 there. We're just talking about the --

20 MR. SPEAKS: Yeah. But if -- you
21 know, in the first year at the new law,
22 everybody complains about the report they get
23 back, then you know you need to make a rule.

24 MR. STALTER: Yeah. Everybody gets a
25 different report, basically, because that's

1 what Josh will do is just compare, you know,
2 statements, so --

3 MR. KRAUS: Do you want to do that?

4 MR. ZELL: And a complaint to the
5 Board is going to be that I have \$472 and I
6 should have \$40 of interest and they only have
7 \$37, so what are you going to do?

8 MR. OTTO: It's not your money anyway.
9 Don't worry about it.

10 MS. EULER: Thanks, Don.

11 CHAIRMAN: That's what I've said all
12 along.

13 (Several people talking simultaneously.)

14 MR. REINHARD: I agree either the
15 minimum or none, and I'd say none.

16 MS. EULER: Okay.

17 MR. REINHARD: None.

18 MR. McCULLOCH: None.

19 MR. KRAUS: All right. We'll just
20 none for now, because you can decide to do one
21 later.

22 MR. REINHARD: Yeah. Absolutely.

23 MS. EULER: Okay.

24 CHAIRMAN: Okay. So, none, I guess.

25 MR. KRAUS: All right. Forty-nine.

1 We don't maintain records regarding principal
2 on the individual contract basis.
3 Administrators track payments, also wide track
4 only interest as opposed to income.

5 MR. STALTER: I think we already
6 decided that.

7 MR. KRAUS: Yeah. All right.
8 Skipping -- moving on. 435, comment 50. On
9 the July 1, 2010 -- which is July 1. I think
10 I've heard a lot of references to July 10th,
11 but I think it's July 1 that everyone is
12 talking about there. This means that no one
13 has to comply to Senate Bill 1 till after July
14 1, 2010, or exactly what does this mean? We
15 need to clarify in rule. And I think we
16 talked about already putting together
17 something to set out what's before and what's
18 after August 28th.

19 MS. EULER: Uh-huh. But, you know, I
20 don't -- I think it's not a bad idea to do a
21 rule on this to clarify that the 2010 date
22 applies to assets of the trust.

23 MR. OTTO: I don't think it's limited
24 to that.

25 MS. EULER: What do you think?

1 MR. OTTO: Well, any provisions in this
2 chapter which come into effect.

3 MS. EULER: You're right. Well, I
4 think it would be good to clarify that.

5 CHAIRMAN: Clarify?

6 MR. McCULLOCH: No.

7 CHAIRMAN: Anyone else?

8 MR. SPEAKS: You just like disagreeing.

9 (Several people talking simultaneously.)

10 MS. DUNN: The only concerns that I
11 see, the less rules you have and the less
12 clarification, the more complaints you have
13 and the more money it costs everyone because
14 once you get a complaint, you have to review
15 it, it goes to the Board, it's a Board meeting.

16 MS. EULER: You send an investigator
17 out.

18 MS. DUNN: And an investigation. And
19 I -- that's the only thing I see is if you
20 have a rule that will prevent complaints
21 coming in, then it's going to be more cost
22 effective for everyone because --

23 MS. EULER: And it will help the
24 trustees to know what to do, too.

25 MS. DUNN: And the funeral home has to

1 be interviewed, and it takes your time and --
2 that's the only concern I would have through
3 the rule, because that's what we see. We see
4 complaints on everything, so that's my only
5 statement. Because, in the long run, it will
6 cost more.

7 MR. McCULLOCH: Don, say again what
8 your thought is on it.

9 MR. OTTO: Well, I mean, I could tell
10 you why this was put in there. I mean, one
11 of the -- some of the concerns why this was
12 put in there were some of the things we've
13 already talked about, that the preneed agents
14 aren't going to be licensed on the 30th, that
15 you might -- to the extent that ongoing, your
16 trust is going to have to -- you know, you're
17 not supposed to have money that's invested in
18 your Uncle Joe's bar, they didn't want
19 everybody having to divest that at a loss on
20 August 29th.

21 MS. EULER: Right.

22 MR. OTTO: So, I really think if you
23 -- I mean, there are a lot of complications
24 the way this is worded, I recognize, but I
25 really think the legislative people who put

1 this in there -- and Representation Wasson was
2 one of the big ones on this -- he wanted a
3 phase-in time for all -- for Chapter 436.

4 MR. McCULLOCH: You're right.

5 MR. OTTO: If you've got a trust that's
6 already is in existence, you're not going to
7 get in trouble if you screw up until July 1.

8 MS. EULER: Right.

9 MR. OTTO: Now, a new trust that
10 starts on, you know, October, sorry, you're
11 under the new rules. But if you're already in
12 existence, you're not going to get in trouble
13 till July 1.

14 MS. EULER: But it only is trusts.
15 It's not the sellers, it's not the agents,
16 it's not the providers, it's the trusts.

17 MR. OTTO: Yeah, I know. I agree with
18 you. But I'm just saying that was their
19 thinking back there.

20 MS. EULER: Right. Right. Which is
21 why I --

22 MR. OTTO: But it got worded to the
23 trusts.

24 MS. EULER: Which is why I think it
25 would be helpful to have a rule to clarify

1 exactly what that means.

2 CHAIRMAN: And your thought is that
3 rule is it's just the trusts?

4 MS. EULER: Uh-huh.

5 MR. McCULLOCH: It certainly wasn't the
6 intent, but that's what it says. Wasson said,
7 when Jerry got up and spoke in his hearing, he
8 brought that up, and he said, wow, that's a
9 great idea, like that was the first time he
10 had ever heard it. But I had been asking for
11 that, and it was, like, go away. But when he
12 said it, it seemed to make a lot of sense.
13 And that certainly was the intent. He knew we
14 were going to need time. He knew the Board
15 would need time. Obviously, it didn't get
16 written properly or very good, but --

17 MS. EULER: But it is what it is.

18 MR. McCULLOCH: Well, you say that
19 sometimes, but then when it doesn't apply or
20 you don't like it, then you want to change it
21 to work it around, you know. So --

22 MS. EULER: No. The Board is always --

23 MR. McCULLOCH: So, let's work this
24 one to make it do what they intended.

25 MS. EULER: The Board is always

1 limited to what the statutory authority
2 provides. The Board can't change what the
3 statutory authority provides, but the Board
4 can clarify and define what the statute says
5 and means. So, my suggestion here is that we
6 clarify what this means, but I don't have a
7 vote. It's not my call.

8 MR. McCULLOCH: We have four
9 attorneys; do we have four opinions of that?

10 MR. OTTO: No, probably eight.

11 (Several people talking simultaneously.)

12 MR. SPEAKS: So, they can all argue
13 both sides of it.

14 MR. KRAUS: I have three opinions
15 myself.

16 MS. EULER: Yeah.

17 MR. KRAUS: And I think they're all
18 wrong.

19 CHAIRMAN: So, as a Board member, you
20 have --

21 MR. McCULLOCH: Well, I thought we
22 kind of addressed this anyway where we were
23 making some exceptions. We understand that
24 some things aren't going to be able to be
25 ready, so we're going to move that date out to

1 December 31, and then we've got some things
2 that will be this date and -- is that kind of
3 what we've been doing anyway?

4 MS. DUNN: Well, it has to be
5 addressed by emergency rules --

6 MS. EULER: It has to be a rule.

7 MS. DUNN: -- if we're going to alter
8 those dates. That's why we're trying to get
9 as many rules in that need them if we're going
10 to alter dates that are effective on August
11 28th.

12 MR. McCULLOCH: What would you
13 suggest? What would you suggest?

14 MR. STALTER: You know, one of the --
15 it gets to be about this way. Okay. Your
16 guesstimate is that existing trusts in place.
17 But the comment they came up last week was
18 what happens if you continue to put payments
19 after August 28th into the old trust. Is that
20 a grandfathering, I mean, since we don't --
21 you know, after July 10th of next year?
22 Because the issue is then, how do you
23 distinguish contracts you have to prove income
24 on and those where you can still take out the
25 20 percent for the income.

1 MR. McCULLOCH: I mean, I would think
2 that if you're going to start new, you better
3 start new with a new trust; okay? But it's
4 going to take a little bit of time to get all
5 the things in place, but, I mean, that's how I
6 thought it was going to be.

7 MR. STALTER: Well, I think there were
8 a lot of things that we -- yeah -- we have to
9 work out. But as far as -- okay -- when do
10 we have to start accruing income? I mean,
11 August 28th, you know. But not with regard to
12 existing trusts --

13 MR. McCULLOCH: Exactly.

14 MR. STALTER: -- because they are --
15 they're outside of this.

16 MR. McCULLOCH: That's right.

17 MR. STALTER: But this July 10th,
18 2010, is -- I always thought of it as
19 investments, you know, compliance with -- you
20 know, we've got this new prudent investor
21 versus prudent man.

22 MR. McCULLOCH: Yeah.

23 MR. STALTER: And, now, that's
24 something that, you know, we've got at least a
25 year to get that turned around.

1 MR. McCULLOCH: Yeah.

2 MR. STALTER: But, you know, we know
3 now that we're going to have to have products
4 exams, we have to show that we put 85 percent
5 in there, we have to show that we have accrued
6 income, and those are the two issues that, you
7 know, I think we have to start on August 28th.

8 MR. McCULLOCH: Yeah.

9 MR. OTTO: And the other distinction
10 which complicates things is it doesn't say
11 apply to trustees governed, it says applies to
12 trusts.

13 MR. STALTER: Yeah. To the trust.

14 MR. OTTO: So, it's broad. I mean, I
15 think this is potentially broader than what --
16 you can argue how broad it is. But since it
17 says trusts, well, I'm the seller for this
18 trust; okay? What regulations apply to me
19 that I'm violating or that I have July -- or
20 I'm okay till July 1st? Because if I'm a
21 seller for this trust, and it says regulations
22 on this trust don't kick in till July 1, you
23 know, it could have been worded better.

24 MS. EULER: Uh-huh. It could have
25 been, but we are stuck with what we have.

1 MR. OTTO: We're stuck with what we've
2 got. But, you know --

3 CHAIRMAN: Well, I'm a little
4 confused, and what is the major issue? I
5 mean, she -- the thought is, she's talking
6 about the trust, but you would like to see
7 something -- it may be too big here, but what
8 you would like to see.

9 MR. McCULLOCH: Well, when I first
10 read it, just as a layperson, I mean, I think
11 it meant that, okay, on the 28th or the 29th,
12 if I'm going to continue to be in the trust
13 business, I better have a new trust and I'm
14 going to have to start complying to these new
15 rules and regulation laws; right? But,
16 honestly, I can't do it all day one, and we
17 know that. Even the Board won't be ready day
18 one, so I'm going to have until this date to
19 get it all up and going; is that kind of the
20 idea?

21 MR. STALTER: We're on the same page.

22 MS. EULER: Uh-huh.

23 MR. McCULLOCH: Okay. Now, I'm
24 finding out that maybe there is some things
25 that aren't just quite that clear; okay? And

1 that's fine; okay? But I think that was the
2 intent of this when Wasson was in there that
3 day.

4 CHAIRMAN: Everything was July 1.
5 That's what you're saying, that you thought
6 Wasson's intent was everything was July 1?

7 MR. McCULLOCH: Yes. Of course.
8 Yeah, I do think that. I thought that at the
9 time; I thought, finally, someone said it, and
10 he agreed.

11 MR. STALTER: I agree with you. Yeah.
12 And I think what happened is that, you know,
13 when we look at this, you have to start --
14 you have to, you know, deposit, you have to
15 accrue income.

16 MR. McCULLOCH: Yeah.

17 MR. SPEAKS: Basically, how do we get
18 around that, and it's -- you know, that's the
19 statute. I mean, we -- you can't go beyond
20 the authority of the statute.

21 UNIDENTIFIED: But the trustee is
22 everything.

23 MR. STALTER: So, I mean, there are
24 minimum things we'll have to do on August
25 28th. Beyond that day, there are a lot of

1 things, you know --

2 MR. McCULLOCH: We've got to get it
3 all up and going. That's what I thought at
4 the time. And I thought, well, good, because
5 it's going to take time because all these
6 counselors have to be notified, explain to
7 them what they have to do now, get them a
8 license, tell them about the fee, work that
9 out, so there's a lot of things, all the
10 paperwork has to get ready. So, yeah, that's
11 what I thought. But, well, heck, you've got a
12 year, that'll be fine, you know. We'll be
13 able to get it all up and going. So, when
14 somebody shows up on my doorstep and says,
15 hey, you know -- you can say, well, I'm
16 working on it, and they may say, well, you
17 don't have this right, and I say, okay, but
18 I'm working on that. We'll get that fixed.
19 I understand. I mean, that's what I would
20 think would be the right way to handle it.
21 Just common sense, it sounds like that's the
22 way to do it.

23 MR. SPEAKS: I agree with that.

24 MR. McCULLOCH: Because you're going
25 to have a lot of that -- not just me. You're

1 going to have a lot of these folks out here,
2 these funeral directors that are now going to
3 have to make decisions and they're going to
4 try to do their own and they're going to try
5 to learn this new law, and I can tell you
6 right now, in my 26 years of this, there's
7 people out there right now that don't
8 understand the old law, much less the new.

9 CHAIRMAN: Right. They don't even
10 know the new exists.

11 MR. McCULLOCH: Well, that's true,
12 too. So, yeah, I think to be fair, that's
13 what we should do for them, and that includes
14 me.

15 CHAIRMAN: So, now, how does all of
16 that translate into what you all are talking
17 about as the rule?

18 MR. SPEAKS: Well, the question says
19 does -- no one has to comply with SB 1, and
20 that's not what this says. This is referring
21 directly to trusts and their administration.

22 MS. EULER: Uh-huh. Right.

23 MR. OTTO: Well, but, what is meant by
24 trust?

25 MR. KRAUS: Well, and do we need a

1 rule to -- I mean, is the section explicit
2 enough, or does there need to be a rule to
3 say anything more about it?

4 MS. EULER: The fact that we -- there
5 are so many different versions of what we
6 think this means from the people in this room,
7 multiply that times 770 leads me to believe we
8 need a rule.

9 MR. OTTO: A very simple one -- you
10 won't like it, I don't think. A very simple
11 one would just be clarify that for trusts
12 established before August 28th, they don't
13 have to comply. That trust is not --

14 MS. EULER: That they are given until
15 July 2010.

16 MR. OTTO: -- does not have to comply
17 with Senate Bill 1 until July 1 of 2010.
18 That's the easiest way. Now, if you don't
19 like it, then it gets more complicated.

20 MR. SPEAKS: Well, and there are some
21 things it never has to comply with because you
22 can't make things retroactive.

23 MS. EULER: Right.

24 MR. ZELL: What would they have to
25 comply with?

1 MR. OTTO: Well, a good example is the
2 contracts that we use; okay? And the
3 disclosure language.

4 MR. ZELL: That's going forward.

5 MR. KRAUS: Yeah. You don't have to
6 go back and amend all of your contracts to
7 include certain language as set out in the new
8 law.

9 MS. EULER: Right.

10 MR. ZELL: What changes to SB 1 do
11 affect our old contracts written today?

12 MR. McCULLOCH: Some of the reporting,
13 I guess.

14 MR. STALTER: Yeah. Reporting
15 diversification.

16 MS. EULER: (Inaudible.)

17 MR. OTTO: Yeah. Using the prudent
18 investment rule. All your future investments
19 because, you know, your investments aren't
20 static. So, anytime that you would reinvest
21 the money, that new -- that reinvestment would
22 be -- would fall, arguably, at least, under
23 the new law after July 1.

24 MS. EULER: And that's one of the
25 consumer publications we're going to put

1 together.

2 MS. DUNN: Bullets, yeah.

3 MR. McCULLOCH: Even of the existing
4 trusts?

5 MS. DUNN: So everyone understands
6 those different dates and what's due when and
7 what's on this report versus that report.

8 MS. EULER: Right.

9 MR. OTTO: I mean, I think a new
10 investment of that existing trust, I think,
11 arguably --

12 MR. McCULLOCH: New investments of the
13 existing trust.

14 MR. KRAUS: And, you know, that's an
15 interesting approach in addressing it from an
16 education standpoint as opposed to a rule
17 standpoint.

18 MS. EULER: Yes.

19 MR. KRAUS: It may be more effective.

20 MS. EULER: Okay.

21 MR. KRAUS: Because I think this could
22 be really difficult and perilous to try to put
23 together a rule that's specific enough to be
24 useful and, yet, not chocked full of holes.

25 MS. EULER: Bad rules.

1 MR. KRAUS: On this topic.

2 MS. RUSSELL: No. He answered what he
3 was talking about.

4 CHAIRMAN: He did? Okay. So, walk on
5 by?

6 MS. EULER: I want to vote.

7 CHAIRMAN: Board?

8 MR. McCULLOCH: Don't clarify any of
9 this; is that the question you're asking?

10 CHAIRMAN: Or at least done by rule.

11 MR. SPEAKS: Address it with an
12 educational --

13 MR. KRAUS: Approach it through
14 education.

15 MR. STALTER: Yeah.

16 MR. SPEAKS: That makes more sense to
17 me.

18 MR. McCULLOCH: I'd go along with
19 that. Okay.

20 MR. STALTER: Yeah. Down the road.

21 MR. OTTO: Continuing education.

22 (Several people talking simultaneously.)

23 MR. KRAUS: Since we're working on some
24 education stuff.

25 (Several people talking simultaneously.)

1 MS. EULER: Okay.

2 MR. KRAUS: Fifty-one.

3 MS. EULER: We've already addressed
4 that.

5 MR. KRAUS: Yeah. Fifty-two. Trusts
6 which hold insurance should be exempt from
7 diversification as well as small trusts, but
8 what other circumstances would justify this
9 exception? That's connected to it because of
10 special circumstances, and what are special
11 circumstances? And I think those are
12 circumstances that are special.

13 MS. EULER: On a case-by-case basis.

14 CHAIRMAN: Aha.

15 MR. OTTO: Thank you.

16 UNIDENTIFIED: Thank you very much.

17 MR. KRAUS: On a case-by-case. I mean,
18 really, how do you -- I mean -- other than
19 saying, well, here's a couple of examples, but
20 that's not all inclusive, I don't know how
21 helpful that is.

22 MR. OTTO: Right.

23 MR. KRAUS: But, you know, that could
24 be done in a rule, I suppose.

25 MR. OTTO: Well, there's a bunch of

1 case law under the Uniform Trust Act on stuff
2 like this, I think.

3 MS. EULER: Yeah. My thought is let's
4 leave that be. Again, we run the risk of
5 being too narrow or too broad, and do it on a
6 case-by-case basis as it comes up.

7 MR. KRAUS: Develop it over time?

8 MS. EULER: And this is language
9 lifted, like Don said, from the Uniform Trust
10 Act, so there's case law out there. There's a
11 body of law.

12 CHAIRMAN: Everybody okay with that?
13 Excellent.

14 MR. KRAUS: All right. Fifty-three.
15 Can a purchaser who has an insurance policy
16 assigned to a funeral home borrow against the
17 policy?

18 MS. EULER: That is a very good
19 question.

20 MR. McCULLOCH: They could, yes.

21 MS. EULER: Yeah. If they're the
22 owner.

23 MR. McCULLOCH: Funeral directors
24 should take caution and make sure that they're
25 the owner so that they can control that, but

1 it could happen.

2 MR. ZELL: How do you know?

3 MR. OTTO: You may not. You should
4 make it clear in your contract if you're only
5 getting credit for what the value of that
6 policy is.

7 MR. McCULLOCH: You wouldn't. If
8 you're the owner, and you just make me the
9 beneficiary, you can do anything you want.
10 You can cancel it, you can do anything you
11 want.

12 MS. EULER: Or make it a contractual
13 part of your contract.

14 MR. ZELL: But you, as the funeral
15 director, have no idea? You never know.

16 MR. McCULLOCH: You need to put in
17 there that you'll only give the service if
18 they pay, you know, type of thing, that kind
19 of verbiage. It's only good if I get paid.
20 If it doesn't pay, then I'm not --

21 MR. OTTO: Or, you know, if they
22 borrow \$5,000 on a \$10,000, you're only
23 getting what you get.

24 MR. McCULLOCH: Yeah. So, a funeral
25 director has to be smart enough to know not to

1 do those things and --

2 CHAIRMAN: So, do we need a rule that
3 says the funeral director needs to be smart
4 enough to know?

5 MR. McCULLOCH: No, I don't.

6 (Inaudible.)

7 (Several people talking simultaneously.)

8 MR. SPEAKS: And put penalties in
9 place.

10 CHAIRMAN: I agree.

11 MS. EULER: I think that's under cause
12 for discipline.

13 CHAIRMAN: Cause for discipline.

14 There you go.

15 MR. KRAUS: Fifty-four. Under Section
16 440. Could set out what this means, but
17 wouldn't have to, especially as -- I think
18 that's regards trustee, his responsibilities.
19 Trustee obligations already addressed
20 elsewhere.

21 MS. EULER: Again, this is lifted from
22 the Uniform Trust Act, and I think we just --
23 I think there's a body of law out there. I
24 don't think we need to give any more further
25 direction.

1 MR. KRAUS: I think that's true.

2 CHAIRMAN: All agree?

3 MR. McCULLOCH: I agree.

4 CHAIRMAN: Agree. X it off.

5 MR. SPEAKS: I just like the word
6 "retards." Does the Uniform Trust Act really
7 say that?

8 CHAIRMAN: Do we need a rule in regard
9 to the retards?

10 (Several people talking simultaneously.)

11 MR. OTTO: We're getting punchy.

12 MR. SPEAKS: We're getting punchy now.

13 MR. McCULLOCH: I don't like the fact
14 that you're talking about me. I'm sitting
15 right here.

16 (Several people talking simultaneously.)

17 MR. McCULLOCH: I'm right here, now,
18 and I can hear everything you're saying over
19 there.

20 MR. KRAUS: We've got a number of
21 terms in sub 2 there that we could define
22 further in rule if we wanted to.

23 CHAIRMAN: Pretty specific, isn't it?

24 MS. EULER: I don't think we need to.

25 MR. KRAUS: That's fairly specific, I

1 think. I mean, you could get into officer,
2 manager, that sort of thing, but --

3 (Several people talking simultaneously.)

4 MR. KRAUS: No? All right. Not a lot
5 of support for that.

6 CHAIRMAN: No support, so just mark it
7 off.

8 MR. STALTER: I mean, just how
9 independent does the independent investment
10 advisor have to be? Isn't that what this
11 section is kind of going after?

12 MS. EULER: This section isn't really
13 going after the independent investment advisor
14 or the investment advisor. It's more because
15 the investment -- the trust is not going to
16 invest in the investment advisor. Well, I
17 don't know if you read the indictment -- with
18 a few exceptions.

19 MR. STALTER: Okay.

20 MS. EULER: So, I guess, I don't see
21 that as an issue unless I'm missing something.
22 Don?

23 MR. OTTO: Well, the only
24 clarification that might be is, particularly
25 on that second one, agents. I mean, any of

1 it. Agents or attorneys of the trust that
2 we're talking about here. I mean --

3 MS. DUNN: Oh, I see. Right. Because
4 there might be a misunderstanding of it, what
5 agents we're talking about.

6 MR. OTTO: Yeah. I mean, because, you
7 know, I'm investing with these other people
8 that are completely independent of me, but it
9 just so happens that they are an agent of a
10 trustee somewhere else.

11 MS. EULER: Of a trustee. That's a
12 good idea.

13 MR. OTTO: And that wasn't the intent.

14 MR. SPEAKS: I see that.

15 MR. OTTO: Same with that first one.
16 Spouses of a -- you know, of a seller. Well,
17 one of your sellers, you know.

18 MS. EULER: Yeah. No spouses.

19 MR. OTTO: Yeah.

20 CHAIRMAN: Is that 56?

21 MR. STALTER: A seller's spouse cannot
22 act as the investment advisor, even if there's
23 a contract between the trustee and the
24 investment advisor or what?

25 MS. EULER: This is about investment

1 decisions.

2 MR. STALTER: Yeah.

3 MS. EULER: This isn't about investment
4 advisors.

5 MR. STALTER: Okay.

6 MS. EULER: The investment advisor is
7 an agent under 440.

8 CHAIRMAN: So, you shouldn't consult
9 your spouse about the investment of the trust?

10 MS. EULER: No, you shouldn't invest
11 in your spouse.

12 CHAIRMAN: Oh, okay.

13 MR. KRAUS: Yeah. Right. Invest the
14 funds with.

15 MS. EULER: Invest the funds with your
16 spouse.

17 CHAIRMAN: Okay.

18 MR. OTTO: You know, I may invest my
19 money in -- I'm trying to think of something
20 that isn't belly-up. You know, with Central
21 Bank of Missouri.

22 MS. EULER: SCI.

23 MR. OTTO: Yeah. Belly-up yet. No.
24 Central Bank of Missouri, but it just so
25 happens that the majority shareholder of

1 Central Bank of Missouri is the wife of
2 somebody who -- the wife of a funeral-home
3 owner, but not anyone that I deal with.

4 MS. EULER: Yeah.

5 MR. OTTO: I just -- I mean,
6 obviously, so it's all supposed to be related
7 to people with the trust.

8 MS. EULER: Right.

9 MR. OTTO: And some rule that
10 clarifies that, I think, would be useful.

11 MS. EULER: Okay.

12 MR. ZELL: This is near and dear to
13 me, and the way I understand it is the trust
14 company has a responsibility to go out and
15 find an investment advisor; correct? They
16 have a contract with that investment advisor.
17 The investment advisor is a registered agent
18 and has -- with a firm -- what is the word --

19 MS. EULER: The trustee has a duty to
20 invest, however that's --

21 MR. ZELL: Okay. So -- and then
22 whatever the investment advisor says, the
23 trustee still is responsible to say, well,
24 it's a good investment or a bad investment.

25 MS. EULER: Right.

1 MR. ZELL: Or, hey, this is a little
2 shaky. Don't invest in Joe's Pizza. They
3 have that responsibility. Whoever that
4 investment advisor is, you're not worried
5 about the relationship they have with anyone,
6 the seller or the provider or anything;
7 correct?

8 MS. EULER: The new law does not have
9 any -- does not address the investment-advisor
10 issue. It's the duty of the trustee to
11 supervise or to make decisions that are good
12 for the trust. And so, if there is an
13 investment advisor, they're under the control
14 of the trustee, and the trustee is
15 responsible. So, if the investment advisor
16 does something stupid, then that's the
17 trustee's problem.

18 MR. ZELL: But the trustee doesn't have
19 guidelines to select the investment advisor?

20 MS. EULER: Yes.

21 MR. ZELL: They do or they don't?

22 MS. EULER: Yes. 436.440.

23 MR. OTTO: You can make an argument
24 you can't have an independent investment
25 advisor after August 28th unless you had one

1 before August 28th.

2 MS. EULER: Right. But even if you
3 do, the investment advisor is subject to the
4 support -- these responsibilities of the
5 trustee because the investment advisor is an
6 agent of the trustee.

7 MR. OTTO: I guess if you wanted to,
8 you could come up with a rule defining
9 independent for independent financial advisor.

10 MS. EULER: We don't have that word in
11 the statute anymore.

12 MR. OTTO: It's still there in the last
13 paragraph.

14 MS. EULER: Yes, that's true.

15 MR. OTTO: I mean, you don't have to.
16 We've gone since 1982 without defining that
17 without any problems.

18 MS. EULER: And look how well that's
19 worked out.

20 MR. OTTO: Yeah. That's what I'm
21 saying. That was sarcasm. Sorry.

22 MS. EULER: Well, we could do that.
23 We could also do a rule that clarifies that
24 the independent investment advisor is still an
25 agent of the trustee, although I think that's

1 a matter of law.

2 MR. STALTER: That's fine. I mean,
3 basically, it is -- so long as the trustee
4 provides oversight for the investment --
5 (inaudible.) It's a question of oversight,
6 basically.

7 MS. EULER: Yeah. Right.

8 MR. STALTER: Okay.

9 MR. OTTO: But, again, it's not
10 necessary because -- I mean, it's not
11 something I don't think you have to do because
12 trust law already covers what a trustee has
13 got to do.

14 MS. EULER: Right.

15 MR. STALTER: But that was a part of
16 436. The old one is that if you appointed an
17 investment advisor, you --

18 MS. EULER: That's one interpretation
19 of the law. It's not the only interpretation
20 of the law.
21 Okay.

22 CHAIRMAN: So, are all the legal minds
23 in one accord here?

24 MS. EULER: Yeah. We're ready to move
25 on, I believe.

1 CHAIRMAN: Do you have your marching
2 orders?

3 MS. DUNN: What are we going to do
4 with 58?

5 CHAIRMAN: I -- are we --

6 MR. KRAUS: Fifty-eight is a little bit
7 different, I think. And whether you want to
8 address where there's a current investment in
9 place, whether you're required to divest that
10 and it's dependent upon whether the trustee
11 deems it prudent.

12 MS. EULER: Yes.

13 MR. KRAUS: Yes to what?

14 MS. EULER: There is no rule -- no law,
15 nothing in the statute says that the trustee
16 must divest of a current investment. The law
17 says that for future investments, thou shalt
18 not.

19 MR. KRAUS: Because this addresses
20 investing, not divesting.

21 MS. EULER: New investments. Right.

22 CHAIRMAN: So, you're making a rule --

23 MS. EULER: Do we need a rule that
24 says that?

25 CHAIRMAN: Was that yes or a no?

1 MS. EULER: I don't know. I don't
2 have a vote.

3 CHAIRMAN: I understand that, but --

4 MR. SPEAKS: Well, Sharon, are you
5 suggesting that they can send in retroactive
6 on current trust accounts?

7 MS. EULER: No. No.

8 MR. KRAUS: She's saying it has to do
9 with investing going forward, not divesting
10 with regard to existing investments.

11 MS. EULER: New investment decisions.
12 Right.

13 CHAIRMAN: And your thought is, we
14 would need a rule saying that?

15 MS. EULER: My -- no. It seems clear
16 to me, but maybe it's not. So, my question
17 to the Board is, would you like a rule on
18 that, because this language says a trustee
19 shall not make any decisions to invest in a
20 trust. But it's --

21 CHAIRMAN: Is everybody cool with that?

22 MS. EULER: -- it would be appropriate
23 to do a rule if the Board wanted a rule, but
24 not necessary.

25 CHAIRMAN: Not necessary, but can.

1 Since everybody said move on, we don't need it.

2 MR. KRAUS: Moving on.

3 CHAIRMAN: And we can jump that whole
4 section.

5 MR. KRAUS: We did 450. Woo-hoo.

6 MS. EULER: Yea. So, we have one
7 section left.

8 MR. KRAUS: Turn the pages. We are
9 flying now.

10 CHAIRMAN: Actually, we are.

11 MR. KRAUS: 455, joint accounts. K62,
12 number of things here. Set out in a rule no
13 pooling of joint accounts, may be in CD or
14 other types of deposit instruments when the
15 agent receives the money and the seller is
16 deemed to have received it. Any thoughts on
17 any of those?

18 MS. RUSSELL: I think you're going to
19 need a rule on joint accounts just by the
20 sheer number of calls Becky has gotten or I've
21 just talked to people that don't understand
22 the pooling part, and that I think you'll be
23 -- it would be a lot easier on the staff if
24 you do a rule on what accounts.

25 MR. KRAUS: Becky does enjoy those

1 calls, though.

2 MS. RUSSELL: I know, she does, don't
3 you, Becky?

4 MS. DUNN: No.

5 CHAIRMAN: Clarification, pooling just
6 meaning that they have to be individual and
7 all of that? Just making sure.

8 MR. FRAKER: Yeah. I agree. Yeah.

9 MR. McCULLOCH: It's not a commingled
10 joint account. It's a commingled trust.

11 CHAIRMAN: Right. Right.

12 MR. REINHARD: How dumb are these sons
13 of bitches?

14 MS. DUNN: And the only reason for a
15 rule on this is because your smaller funeral
16 homes probably focus on joint accounts.

17 MS. RUSSELL: Exactly.

18 MS. DUNN: So, if they -- if a rule
19 would help clarify for them --

20 MR. REINHARD: Well, make a rule that
21 says individual accounts.

22 CHAIRMAN: All in favor says yes;
23 right?

24 MR. KRAUS: And that's clarifying each
25 of those?

1 MR. REINHARD: Well, let's go through
2 them. I mean, you clarified that one about no
3 pooling.

4 MR. KRAUS: Right.

5 MR. OTTO: How can you get clearer
6 than the statute there?

7 MR. REINHARD: Yeah. How much clearer
8 can it be?

9 MR. OTTO: There shall be a separate
10 joint account established for each preneed
11 contract.

12 MS. DUNN: Don, you just want
13 business. No, that's okay. If it's clear,
14 it's clear.

15 MR. REINHARD: What's going on in the
16 rule? I think it's fine. You've got three
17 yeses on that.

18 CHAIRMAN: Got it.

19 MR. McCULLOCH: What, specifically, do
20 people ask you, Becky, when you get --

21 MS. DUNN: Well, right now, they're
22 not, but they don't understand anything about
23 Senate Bill 1, and they really don't know that
24 -- how it's going to affect them having joint
25 accounts because that was the easiest way that

1 the funeral homes could do business. So, if
2 there's anything that can be set out by rule
3 to help those funeral homes --

4 MR. McCULLOCH: You mean, so that they
5 can read it and they don't have to call you?

6 MS. DUNN: Right.

7 MR. McCULLOCH: I don't think that's
8 going to happen.

9 MS. DUNN: Yeah.

10 MR. McCULLOCH: I mean, I think you're
11 going to get the call anyway, but I understand
12 your point, though.

13 MR. KRAUS: We could make a rule that
14 everybody has to read the rules before calling
15 Becky or you're subject to discipline.

16 MS. DUNN: And if you all understand
17 this, then --

18 MR. McCULLOCH: I do think it's clear,
19 but if that's a problem for you, we need to
20 fix it. I mean, why not?

21 MS. DUNN: But is there something we
22 can put in the rule that will help them
23 understand this, because if a rule is just
24 going to say what the statute says, then it's
25 not going to be helpful.

1 MR. McCULLOCH: Well, if they just said
2 commingling --

3 MR. KRAUS: Well, that's true because
4 you don't want to just copy what it says.

5 MS. DUNN: Yes.

6 MR. KRAUS: And if you say something
7 slightly different, then are you changing what
8 the statute really means when you don't mean
9 to, and then you have a problem with the rule
10 --

11 MS. EULER: Right.

12 MR. KRAUS: -- and you're not --
13 you're just creating problems.

14 MS. EULER: Right.

15 MR. REINHARD: We can make a rule
16 there's no commingling. Does that clear it up
17 for them?

18 MR. McCULLOCH: Can you use that word
19 instead? It seems like people understand that
20 word.

21 MR. KRAUS: Yeah. Unless -- then we
22 have define what commingling is.

23 MR. REINHARD: We're not sure.

24 (Inaudible.)

25 MR. KRAUS: I mean, that's the thing.

1 You can just create more -- you can complicate
2 it unintentionally.

3 MS. EULER: Right.

4 MS. DUNN: So, maybe it doesn't need
5 one.

6 (Several people talking simultaneously.)

7 MR. McCULLOCH: Do you think it's a
8 situation where -- hey, Becky?

9 MS. DUNN: For those that do joint
10 accounts, and if this is clear, just go back
11 and read these sections of the law and make
12 sure you understand them.

13 MR. FRAKER: What do you say? Do we
14 need a rule?

15 MR. KRAUS: I don't think so, but I
16 don't do joint accounts.

17 MR. REINHARD: Then we don't need a
18 rule.

19 MR. McCULLOCH: Martin, as we try to
20 educate folks, if that fixes it, good. If it
21 doesn't, then we can always go back and do
22 something to help.

23 MR. REINHARD: Yeah. If it comes to
24 be a problem, let's do that. So, no rule.

25 MR. KRAUS: All right.

1 MR. McCULLOCH: Got you.

2 CHAIRMAN: More in the educational
3 thought later.

4 MR. FRAKER: Yeah, I agree.

5 CHAIRMAN: Okay. No rule.

6 MR. KRAUS: CD or other type of
7 deposit. Was that on all of those?

8 CHAIRMAN: No. Maybe we were just
9 talking the pool. Is that on all the whole
10 group, or just that thought?

11 MR. REINHARD: Are they asking -- in
12 that case, are they asking, like, okay, since
13 they start off and they're making payments on
14 a joint account, you could put it in a
15 passbook savings; you see what I'm saying? Is
16 that what they're -- are they asking you a
17 question, is that okay?

18 CHAIRMAN: CD or other type of deposit
19 instrument.

20 MR. KRAUS: I think they're trying to
21 confirm that those are okay.

22 MR. REINHARD: But that's a joint
23 account. You would have a -- anything you're
24 saying is a joint account. It doesn't have to
25 be in a CD; it could be in a passbook

1 savings drawing .2 percent.

2 MR. KRAUS: Right.

3 MR. REINHARD: That's joint.

4 MR. KRAUS: Right.

5 MR. REINHARD: You don't roll them,
6 but you --

7 CHAIRMAN: The word is "joint," not
8 "CD."

9 MR. REINHARD: Huh?

10 CHAIRMAN: Like you said, the word is
11 "joint," not "CD."

12 MR. REINHARD: Yeah. That's exactly
13 right.

14 MR. FRAKER: Well, your CD has got at
15 least two names on it.

16 MR. KRAUS: So, you think that's fine?

17 CHAIRMAN: So, I think we're okay,
18 aren't we?

19 MR. REINHARD: I think we're fine
20 there, too.

21 MR. KRAUS: Okay. I think the last
22 one, we've talked about already.

23 CHAIRMAN: All right. So, no one at
24 all.

25 MS. RUSSELL: Never mind.

1 CHAIRMAN: Darlene?

2 MS. RUSSELL: No. I'm not even going
3 to go there. It's just too tiresome -- joint
4 accounts.

5 CHAIRMAN: Well, now, if it's important
6 though, it's important.

7 MS. RUSSELL: Well, just the typical
8 question that you get if they have a bank and
9 all their money goes into one account, but
10 that bank keeps track of everybody's name on
11 each -- whose money is in there. That's what
12 they consider joint account. Some people are
13 considering those joint accounts. To me,
14 that's not a joint account.

15 MR. McCULLOCH: That's not a joint
16 account.

17 MS. RUSSELL: That's not a joint
18 account, so -- that's when the word "pooling"
19 and stuff, you know --

20 MR. McCULLOCH: That's a little savings
21 account with a whole bunch of people's money
22 in it.

23 MS. RUSSELL: Exactly. Exactly. That
24 is exactly what it is, but I think you're fine.

25 CHAIRMAN: But won't there --

1 MR. KRAUS: Yeah. There will be some
2 education to be done there.

3 MS. RUSSELL: Educating them.

4 CHAIRMAN: The reporting requirements
5 will change part of that, too.

6 MR. KRAUS: Yeah. That's true. Yeah.

7 MR. FRAKER: It's hard for me to
8 believe that that's either way. It's hard for
9 me to believe that people would do that.

10 CHAIRMAN: Me, too.

11 MR. KRAUS: All right. Sixty-three
12 actually says it's better left to finance law.
13 It's reasonably have the potential to gain
14 income or increase in value. I think that is
15 addressed in finance law. Sixty-four, let's
16 see. Could define in a rule doing some --
17 (inaudible) -- in the Board unnecessarily in
18 future unforeseen circumstances? This adds to
19 what is reasonable expenses. According to the
20 comment, that even suggests case by case,
21 which I agree with. I don't know if anyone
22 else has any thoughts as to --

23 MR. McCULLOCH: Just leave it alone,
24 do you think?

25 MR. KRAUS: Yeah. I think just leave

1 it alone. All right.

2 CHAIRMAN: Everybody shakes head yes.

3 (Several people talking simultaneously.)

4 MS. RUSSELL: Earl, on a joint
5 account, one question I get all the time is
6 100 percent of the money has to go in and you
7 don't get to keep that 5 percent, and that's
8 correct; right? On the joint accounts?

9 MR. KRAUS: Yeah. I think that --
10 yeah. I think that's right.

11 (Several people talking simultaneously.)

12 MS. RUSSELL: I just want to make sure
13 because that -- they're already saying, well,
14 we get to keep the 5 and then we get to keep
15 10. No. Joint account, 100 percent. It's
16 going to be -- it's different than a trust.

17 MR. KRAUS: Yeah, it's different. The
18 trust is -- yeah. It's all different.

19 (Several people talking simultaneously.)

20 MR. KRAUS: So, that's all of the
21 sections.

22 (Several people talking simultaneously.)

23 MR. KRAUS: Now, we also -- I mean, if
24 you wanted to, we could either do that at this
25 meeting or next meeting. We have some draft

1 rules that we put together last time. And --
2 yeah. And I actually have to go so I can
3 pick up my kids on time, but if you all want
4 to do that today, you can --

5 MS. EULER: I think we should do it
6 next meeting.

7 (Several people talking simultaneously.)

8 MS. RUSSELL: Will they be posted on
9 the Web so we can look at them before the
10 next meeting.

11 MS. DUNN: They're there.

12 MS. RUSSELL: Oh, are they now? Oh.
13 Oh, the ones that you --

14 MS. DUNN: The emergency rules on the
15 August 5th.

16 (Several people talking simultaneously.)

17 MR. KRAUS: And we'll have additional
18 changes to those, too, I think, but -- but I
19 think they just got on there yesterday.

20 (Several people talking simultaneously.)

21 MS. DUNN: But if it doesn't seem
22 clear, let us know because we're trying to put
23 it into the right formats.

24 CHAIRMAN: Did everybody catch that?
25 Did everybody catch that?

1 MS. DUNN: No.

2 CHAIRMAN: The emergency rules that
3 have been at least addressed -- it's not
4 saying that's the rule, it's just that they've
5 been addressed -- are on the Web site. You
6 can go look at them now, see what's there,
7 fully with the anticipation they'll probably
8 be worked on some more, but if you want to go
9 to the Board Web site, you can look at those,
10 and the question actually was, do we want to
11 look at those, talk about them now, but
12 probable better to go look at them, and then
13 after you've really had an opportunity to
14 look, actually have something to talk about.

15 MS. DUNN: And they're under the
16 August 5th meeting.

17 CHAIRMAN: They're under the August 5th
18 meeting.

19 (Several people talking simultaneously.)

20 MS. DUNN: Any more agendas? They're
21 all the same.

22 MS. EULER: The rest of the sessions,
23 the rest of Senate Bill 1.

24 MS. DUNN: Oh, I have -- it's what --
25 it's on the Web site. We just use the same

1 agenda every week.

2 CHAIRMAN: The goal would have been
3 that we did all of the what we've done and
4 then talked about the -- what we have -- the
5 assignments from last week and all that, but
6 it's just taken too much time after we've
7 really --

8 MR. SPEAKS: So, I have to do another
9 interpretive dance next week? I knew that was
10 going to stay.

11 (Several people talking simultaneously.)

12 MS. DUNN: We have everyone's comments
13 numbered each meeting, so the new stuff is out
14 on our agenda -- I mean, is out on our Web
15 site.

16 (Several people talking simultaneously.)

17 MR. KRAUS: Yeah. Be sure and check
18 back with the Web site, too, because as we
19 work on the draft rules and make changes, then
20 we'll repost them to get them ready to be
21 reviewed by the Board, but --

22 MR. ZELL: When do you think you'll
23 have rules written down?

24 MS. EULER: We have some.

25 MR. KRAUS: We have some now. The

1 goal is to have drafts prepared -- for
2 emergency rules, drafts prepared, approved by
3 the Board for filing, and actually filed on
4 August 28th so that then they can be effective
5 ten days after that. That's the earliest we
6 can -- absolute earliest we can do it.

7 MR. ZELL: So, what happens between
8 the 28th and the ten days?

9 MR. KRAUS: During that time, you know
10 what the rule is going to be. That's the
11 absolute most we have authority to do. You
12 can't do anything sooner than that, so --

13 UNIDENTIFIED: Well, I love the way our
14 government is working.

15 MR. KRAUS: Yeah. We're making
16 sausages.

17 MR. REINHARD: Well, it's better than
18 what it would be over there, whatever, China
19 or --

20 CHAIRMAN: Okay.

21 MS. EULER: Okay. Thanks.

22 MS. DUNN: Everybody remembers what
23 time and day the next meeting is; right?

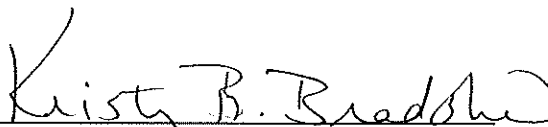
24 CHAIRMAN: When is it?

25 MS. DUNN: Okay. It is --

1 CHAIRMAN: Next meeting is --
2 MS. DUNN: August 19th at 9:00 a.m.
3 CHAIRMAN: August 19th, 9:00 a.m.
4 (Off the record)

I, Kristy B. Bradshaw, a Certified Court Reporter in the State of Missouri, do hereby certify that the foregoing transcript constitutes a full, true and correct record of said proceedings that were held on August 11, 2009; that said proceedings were recorded by me and afterwards transcribed under my direct supervision.

Given at my office this 8th day of September 2009.


KRISTY B. BRADSHAW, CCR

From: Brad Speaks [REDACTED]
Sent: Friday, July 24, 2009 5:09 PM
To: PR.Embalm
Cc: Euler, Sharon; Dunn, Becky; Lindleyfh [REDACTED]
Subject: Request

To the State Board of Funeral Directors and Embalmers:

I would like to formally ask that the Missouri State Board of Funeral Directors and Embalmers (MSBFE) file a motion for hearing in the Texas case (debacle), in regards to the 7 items listed below:

1. Payment of claims from NPS
2. Timing of claims payment
3. Ongoing consumer payments on contracts
4. Missouri banks and their liability, and the class action lawsuits on behalf of Missouri funeral homes
5. Expenses of the CFA in pursuing this matter
6. Access to teleconference report conferences with the SDR
7. The SDR's intent to send a letter to all consumers re: claims against NPS.

I further request that the state board hire Mr. Robert Cowherd as the board's attorney so that he can work on this ongoing issue for the consumers of Missouri and the funeral providers who have been harmed. There is much at stake and Mr. Cowherd is extremely well-versed in the matters surrounding these issues and I feel that he is ideally qualified to stand up for the interests of the harmed parties on behalf of the State Board. This move would make a lot of sense, now that the board is empowered to hire it's own attorney.

Most sincerely,
Brad

Brad Speaks | President
Speaks Family Legacy Chapels
✉: P.O. Box 259 | Independence, MO | 64051
📧: brad.speaks@speakschapel.com
☎: 816.252.7900
📞: 816.252.9758

STATEMENT OF CONFIDENTIALITY:

The information contained in this message and any attachments to this message are intended for the exclusive use of the addressee(s) and may contain confidential or privileged information. If you are not the intended recipient, please notify Brad Speaks at 816-807-2484, and destroy all copies of this message and any attachments.

8/5/2009

Additional Handouts – August 11, 2009

Board of Embalmers & Funeral Directors

WELCOME TO THE BOARD OF EMBAL

August 11

Board Meeting Addendum Working Documents

Date

Draft SB1 Implementation Group II _2_

Public Comments

Date

Bill Stalter August 11 2009 Comments

Don Otto August 11 2009 Comments

Mark Warren August 11 2009 comments

Roger Richie August 11 2009 comments

August 11

Board Meeting Addendum Working Documents

Draft SB1 Implementation Group II _2_

A. SB1 implementation – Group II

436.400. Title of Act

The provisions of sections 436.400 to 436.520 shall be
2 referenced as the "Missouri Preneed Funeral Contract Act" and shall
3 apply only to preneed contracts entered into, and accounts created on
4 or after, August 28, 2009, unless otherwise specified.

436.405. Definitions

1. As used in sections 436.400 to 436.520, unless the
2 context otherwise requires, the following terms shall mean:

3 (1) "Beneficiary", the individual who is to be the subject of the
4 disposition or who will receive funeral services, facilities, or
5 merchandise described in a preneed contract;

Comment [K1]: We could end up with additional terms to define by rule. They cannot be inconsistent with these statutory definitions.

6 (2) "Guaranteed contract", a preneed contract in which the seller
7 promises, assures, or guarantees to the purchaser that all or any
8 portion of the costs for the disposition, services, facilities, or
9 merchandise identified in a preneed contract will be no greater than
10 the amount designated in the contract upon the preneed beneficiary's
11 death or that such costs will be otherwise limited or restricted;

12 (3) "Insurance-funded preneed contract", a preneed contract
13 which is designated to be funded by payments or proceeds from an
14 insurance policy or single premium annuity contract;

15 (4) "Joint account-funded preneed contract", a preneed contract
16 which designates that payments for the preneed contract made by or
17 on behalf of the purchaser will be deposited and maintained in a joint
18 account in the names of the purchaser and seller, as provided in this
19 chapter;

20 (5) "Market value", a fair market value:

21 (a) As to cash, the amount thereof;

22 (b) As to a security as of any date, the price for the security as
23 of that date obtained from a generally recognized source, or to the
24 extent no generally recognized source exists, the price to sell the
25 security in an orderly transaction between unrelated market
26 participants at the measurement date; and

27 (c) As to any other asset, the price to sell the asset in an orderly
28 transaction between unrelated market participants at the measurement
29 date consistent with statements of financial accounting standards;

30 (6) "Nonguaranteed contract", a preneed contract in which the
31 seller does not promise, assure, or guarantee that all or any portion of
32 the costs for the disposition, facilities, service, or merchandise
33 identified in a preneed contract will be limited to the amount
34 designated in the contract upon the preneed beneficiary's death or that
35 such costs will be otherwise limited or restricted;

36 (7) "Preneed contract", any contract or other arrangement which

Comment [O2]: Maybe set out in rule that:
-where there is no delivery, there is no preneed
-difference between preplanning and prepaying
-that trust, insurance and joint account are only ways to finance a preneed contract in Mo without violating statute (and that preneed contracts finance in other ways are still "preneed contracts")

37 provides for the final disposition in Missouri of a dead human body,
38 funeral or burial services or facilities, or funeral merchandise, where
39 such disposition, services, facilities, or merchandise are not
40 immediately required. Such contracts include, but are not limited to,
41 agreements providing for a membership fee or any other fee for the
42 purpose of furnishing final disposition, funeral or burial services or
43 facilities, or funeral merchandise at a discount or at a future date;

44 (8) "Preneed trust", a trust to receive deposits of, administer, and
45 disburse payments received under preneed contracts, together with
46 income thereon;

47 (9) "Purchaser", the person who is obligated to pay under a
48 preneed contract;

49 (10) "Trustee", the trustee of a preneed trust, including successor
50 trustees;

51 (11) "Trust-funded preneed contract", a preneed contract which
52 provides that payments for the preneed contract shall be deposited and
53 maintained in trust.

54 2. All terms defined in chapter 333, RSMo, shall be deemed to
55 have the same meaning when used in sections 436.400 to 436.520.

436.410. Cemetery exception

The provisions of sections 436.400 to 436.520 shall not
2 apply to any contract or other arrangement sold by a cemetery
3 operator for which payments received by or on behalf of the purchaser
4 are required to be placed in an endowed care fund or for which a
5 deposit into a segregated account is required under chapter 214, RSMo;
6 provided that a cemetery operator shall comply with sections 436.400
7 to 436.520 if the contract or arrangement sold by the operator includes
8 services that may only be provided by a licensed funeral director or
9 embalmer.

Comment [O3]: Consider defining what's exempt here and what's not. Or leave alone.

Comment [K4]: Some issues raised last week regarding 333.310: preneed payments are not deposited to an endowed care fund, and the segregated account was eliminated by SB296.

436.412. Grandfather clause

Each preneed contract made before August 28, 2009, and
all payments and disbursements under such contract shall continue to
be governed by this chapter as the chapter existed at the time the
contract was made. Any licensee or registrant of the board may be
disciplined for violation of any provision of sections 436.005 to 436.071
within the applicable statute of limitations. In addition, the provisions
of section 436.031, RSMo, as it existed on August 27, 2009, shall continue
to govern disbursements to the seller from the trust and payment of
trust expenses. Joint accounts in existence as of August 27, 2009, shall
continue to be governed by the provisions of section 436.053, as that
section existed on August 27, 2009.

Comment [K5]: When drafting rules and particularly when addressing time period immediately following 08/28/09, we'll want to keep in mind that the prior statutes can still come into play.

Comment [O6]: Could set out in rule some things from prior law:
-seller gets 20% plus interest
-financial advisor paid
-seller pays trust expense

Comment [O7]: Maybe set out in rule that under new law, all money in a trust funded preneed must go first into the trust

436.415. Provider/Seller obligations

1. Except as otherwise provided in sections 436.400 to
2 436.520, the provider designated in a preneed contract shall be
3 obligated to provide final disposition, funeral or burial services and
4 facilities, and funeral merchandise as described in the preneed
5 contract.

6 2. The seller designated in a preneed contract shall be obligated
7 to collect and properly deposit and disburse all payments made by, or
8 on behalf of, a purchaser of a preneed contract and ensure that is
9 statutorily and contractual duties are met, in compliance with sections
10 436.400 to 436.520, RSMo.

Comment [K8]: May want to define these terms as used in chp. 436 and the rules promulgated thereunder by rule.

Comment [K9]: With regard to third party sales, is the funeral home obligated even if the seller is incapable of performing (due to insolvency) according to the terms of the seller/provider agreement?

Comment [K10]: What about insurance where premiums are made directly to the insurer?

Comment [O11]: May want to set out in rule:
-re: provider obligations, funeral director in charge is responsible
-seller and provider obligations apply to all contracts, old and new

436.420. Provider/Seller contract

1. No person shall be designated as a provider in a
2 preneed contract unless the provider has a written contractual
3 agreement with the seller. Any seller who designates a person as a
4 provider in a preneed contract without a contractual relationship with
5 such person is in violation of the provisions of sections 436.400 to
6 436.520. No contract is required if the seller and provider are the same
7 legal entity.

8 2. The written agreement required by this section shall include:

9 (1) Written consent from the provider authorizing the seller to
10 designate or obligate the provider under a preneed contract;

11 (2) Procedures for tracking preneed contract funds or payments
12 received by the provider and for remitting such funds or payments to
13 the seller, including, the time period authorized by the seller for the
14 remittance of funds and payments; and

15 (3) The signatures of the seller and the provider or their
16 authorized representatives and the date such signature was obtained.

17 3. A provider shall notify the board within fifteen days of
18 authorizing or otherwise agreeing to allow a seller to designate himself
19 or herself as the provider under any preneed contract.

20 4. Upon request of the board, a seller, provider, or preneed agent
21 shall provide a copy of any preneed contract or any contract or
22 agreement with a seller or provider to the board.

Comment [K12]: May want a rule
specifying how notice is to be provided

436.425. Consumer contract requirements

**1. All preneed contracts shall be sequentially numbered
2 and in writing and in a font type and size that are easily read, and shall
3 clearly and conspicuously:**

Comment [K13]: May want to define/specify
- maybe 12 point or larger type, Times New Roman or something similar

**4 (1) Include the name, address and phone number of the
5 purchaser, beneficiary, provider and seller;**

**6 (2) Identify the name, address, phone and license number of the
7 provider and the seller;**

**8 (3) Set out in detail the disposition, funeral and burial services
9 and facilities, and merchandise requested;**

**10 (4) Identify whether the contract is trust funded, insurance
11 funded, or joint account funded;**

**12 (5) Include notice that the cancellation of the contract shall not
13 cancel any life insurance funding the contract, and that insurance
14 cancellation is required to be made in writing to the insurer;**

Comment [K14]: While this section is prefaced to suggest all contracts must include provisions such as (5), inclusion of insurance related provisions in a trust funded contract (and visa versa) will be confusing to the consumer.

**15 (6) Include notice that the purchaser will only receive the cash
16 surrender value of any insurance policy funding the contract if
17 cancelled after a designated time, which may be less than the amount
18 paid into the policy;**

**19 (7) Include notice that the board provides by rule that the
20 purchaser has the right to transfer the provider designation to another
21 provider;**

Comment [K15]: Could set forth more specifics as to what these notices should be, Maybe even provide language or a form.

**22 (8) Prominently identify whether the contract is revocable or
23 irrevocable;**

Comment [K16]: Could set out specifics via rule

**24 (9) Set forth the terms for cancellation by the purchaser or by
25 the seller;**

**26 (10) Identify any preneed trust or joint account into which
27 contract payments shall be deposited, including the name and address
28 of the corresponding trustee or financial institution;**

**29 (11) Include the name, address and phone number of any
30 insurance company issuing an insurance policy used to fund the
31 preneed contract;**

32 (12) Include the name and signature of the purchaser, the
33 provider or its authorized representative, the preneed agent
34 responsible for the sale of the contract, and the seller or its authorized
35 representative;

36 (13) Prominently identify whether the contract is a guaranteed
37 or nonguaranteed contract;

38 (14) Include any applicable consumer disclosures required by the
39 board by rule; and

40 (15) Include a disclosure on all guaranteed installment payment
41 contracts informing the purchaser what will take place in the event the
42 beneficiary dies before all installments have been paid, including an
43 explanation of what will be owed by the purchaser for the funeral
44 services in such an event.

45 (16) Comply with the provisions of sections 436.400 to 436.520 or
46 any rule promulgated thereunder.

47 2. A preneed contract shall be voidable and unenforceable at the
48 option of the purchaser, or the purchaser's legal representative, if it is
49 determined in a court of competent jurisdiction that the contract is not
50 in compliance with this section or not issued by a seller licensed under
51 chapter 333, RSMo, or if the provider has not consented to serve as
52 provider at the time the contract was executed. Upon exercising the
53 option by written notice to the seller and provider, all payments made
54 under such contract shall be recoverable by the purchaser, or the
55 purchaser's legal representative, from the contract seller, trustee, or
56 other payee thereof.

57 3. A beneficiary who seeks to become eligible to receive public
58 assistance under chapter 208, RSMo, or any other applicable state or
59 federal law may irrevocably waive their rights to receive any refund or
60 payment of any monies from the funds or insurance used to fund their
61 preneed contract. Such irrevocable waiver may be executed at any
62 time and shall be in writing, signed and dated by the beneficiary and
63 shall be delivered to the seller and any applicable trustee, financial
64 institution or insurance company;

65 4. All purchasers shall have the right as provided in this chapter
66 to cancel or rescind a revocable preneed contract and transfer any
67 preneed contract with or without cause.

Comment [O17]: May want to clarify who, in 3rd party seller situation, is required to sign the contract.

Including the seller's signature may be difficult especially where the contract is written in the purchaser's home

Comment [O18]: Provide the next of kin contact for beneficiary?

Comment [K19]: To the extent the contract includes both guaranteed and non-guaranteed, clearly identify what is non-guaranteed.

Comment [K20]: Could define or set out specifics

Comment [K21]: Will need to address by addendum in many situations.

Comment [K22]: Can decide what these would be (if any) and set out in rule, maybe:
-it's a binding contract
-have right to have it reviewed by an attorney
-notice of state board complaint process

Comment [K23]: Could be more specific than this in rule if want to, maybe provide acceptable language by rule or by form

Comment [K24]: With the average funeral around \$8,000, a small claims court would have 'competent jurisdiction', and thus could determine compliance with 436 and/or 333.

Comment [K25]: If the contract is voided by the purchaser for non-compliance, the purchaser is entitled to the entire trust or joint account. If insurance funded, then purchaser pr

Comment [O26]: If do a rule on public assistance, may want to contact MoHealthNet to collaborate

Comment [O27R26]:

Comment [O28]: Could provide acceptable language by rule or by form

Comment [K29]: This is a drafting error that exposes sellers to a risk of having to return all payments. If a purchaser can rescind his contract, it is as though the contract has been voided, and the seller must return everything, even the origination fee.

68 ~~S.~~ A preneed contract, shall not be changed from a trust-funded,
69 insurance-funded, or joint account-funded preneed contract without the
70 written consent of the purchaser.

Comment [K30]: Will the Board apply this retroactively to preclude sellers from correcting problem contracts or arrangements?

Comment [O31]: Could define further by rule

436.430. Trust funded contract requirements

1. A trust-funded preneed contract shall comply with sections 436.400 to 436.520 and the specific requirements of this section.

2. A seller must deposit all payments received on a preneed contract into the designated preneed trust within sixty days of receipt of the funds by the seller, the preneed sales agent or designee. A seller may not require the consumer to pay any fees or other charges except as authorized by the provisions of chapter 333, RSMo, and this chapter or other state or federal law.

3. A seller may request the trustee to distribute to the seller an amount up to the first five percent of the total amount of any preneed contract as an origination fee. The seller may make this request at any time after five percent of the total amount of the preneed contract has been deposited into the trust. The trustee shall make this distribution to the seller within 15 days of the receipt of the request.

4. In addition to the origination fee, the trustee may distribute to the seller, an amount up to ten percent of the face value of the contract on a preneed contract at any time after the consumer payment has been deposited into the trust. The seller may make written request for this distribution and the trustee shall make this distribution to the seller within fifteen days of the receipt of the request or as may be provided in any written agreement between the seller and the trustee.

5. The trustee of a preneed trust shall be a state- or federally-chartered financial institution authorized to exercise trust powers in Missouri. The trustee shall accept all deposits made to it for a preneed contract and shall hold, administer, and distribute such deposits, in trust, as trust principal, under sections 436.400 to 436.520.

6. The financial institution referenced herein may neither control, be controlled by, nor be under common control with the seller or preneed agent. The terms "control", "controlled by" and "under common control with" means, the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent

Comment [O32]: Should there be a rule regarding whether the following are included or excluded from the trusting requirement:
-administrative fees
-state preneed contract fee
-late fees
-finance charges

Comment [K33]: What about payments made directly to the trust from the consumer?

Comment [K34]: Are administrative fees, credit life premiums and finance charges included as "payments"?

Comment [K35]: What about administration fees? They aren't prohibited, but not necessarily authorized.

Comment [O36]: May want to clarify in rule that this means all funds must be deposited in the trust and after deposit then may be disbursed by the trustee

Comment [K37]: What happens if trustee has a dispute over the request?

Comment [O38]: May also want to clarify in rule how/when this can be distributed

Comment [K39]: This language is fairly typical of provisions that require the fiduciary to be 'located' within the state. Will foreign fiduciaries be required to comply with Missouri's Sec.362.600?

Comment [K40]: May want to define "control"

38 or more of the voting securities. This presumption may be rebutted by
39 a showing to the board that control does not in fact exist.

Comment [K41]: Could set out procedures for this, but wouldn't have to.

40 7. Payments regarding two or more preneed contracts may be
41 deposited into and commingled in the same preneed trust, so long as
42 the trustee maintains adequate records that individually and
43 separately identify the payments, earnings, and distributions for each
44 preneed contract.

45 8. Within a reasonable time after accepting a trusteeship or
46 receiving trust assets, a trustee shall review the trust assets and make
47 and implement decisions concerning the retention and disposition of
48 assets in order to bring the trust portfolio into compliance with the
49 purposes, terms, distribution requirements, other circumstances of the
50 trust, and all other requirements of sections 436.400 to 436.520.

Comment [K42]: Will this fiduciary review requirement be imposed retroactively to existing trusts?

51 9. All expenses of establishing and administering a preneed trust,
52 including trustee's fees, legal and accounting fees, investment expenses,
53 and taxes may be paid from income generated from the investment of
54 the trust assets. Principal of the trust shall not be used to pay the costs
55 of administration. If the income of the trust is insufficient to pay the
56 costs of administration, those costs shall be paid as per the written
57 agreements between the seller, provider and the trustee.

Comment [K43]: Point of clarification that fiduciaries can recover their expense in setting up new trusts compliant with SB1.

58 10. The seller and provider of a trust funded guaranteed preneed
59 contract shall be entitled to all income, including, but not limited to,
60 interest, dividends, capital gains, and losses generated by the
61 investment of preneed trust property regarding such contract as
62 stipulated in the contract between the seller and provider. Income of
63 the trust, excluding expenses allowed under subsection 10 of this
64 section, shall accrue through the life of the trust, except in instances
65 when a contract is cancelled. The trustee of the trust may distribute
66 market value of all income, net of losses, to the seller upon, but not
67 before, the final disposition of the beneficiary and provision of the
68 funeral and burial services and facilities, and merchandise to, or for,
69 the benefit of the beneficiary. This subsection shall apply to trusts
70 established on or after August 28, 2009.

Comment [K44]: Is there a minimum that the seller must pay the provider?

Comment [K45]: This language suggests that the seller and provider can agree to how income may be divided. May a seller (who acts as its own provider) incorporate similar provisions into the preneed contract that contemplate successor providers who do not have a trust?

71 11. Providers shall request payment by submitting a certificate
72 of performance to the seller certifying that the provider has rendered
73 services under the contract or as requested. The certificate shall be
74 signed by both the provider and the person authorized to make
75 arrangements on behalf of the beneficiary. If there is no written
76 contract between the seller and provider, the provider shall be entitled
77 to the market value of all trusts assets allocable to the preneed
78 contract. Sellers shall remit payment to the provider within sixty days

Comment [O46]: Should board make a form?

Would the signing of an at-need contract suffice since such contract would be signed by both parties and in such contract they agree to deliver the merchandise and services for the beneficiary?

79 of receiving the certificate of performance.

80 12. If a seller fails to make timely payment of an amount due a
81 provider under sections 436.400 to 436.520, the provider shall have the
82 right, in addition to other rights and remedies against such seller, to
83 make demand upon the trustee of the preneed trust for the contract to
84 distribute to the provider from the trust all amounts to which the seller
85 would be entitled to receive for the preneed contract.

Comment [K47]: Will this section
be applied retroactively to Pre'09
trusts?

86 13. The trustee of a preneed trust, including trusts established
87 before August 28, 2009, shall maintain adequate books and records of
88 all transactions administered over the life of the trust and pertaining
89 to the trust generally. The trustee shall assist the seller who
90 established the trust or its successor in interest in the preparation of
91 the annual report described in section 436.460. The seller shall furnish
92 to each contract purchaser, within thirty days after receipt of the
93 purchaser's written request, a written statement of all deposits made
94 to such trust regarding such purchaser's contract including the
95 principal and interest paid to date.

Comment [O48]: Maybe explain this
in rule

Comment [K49]: We don't maintain
records regarding "principal" on the
individual contract basis.
Administrators track payments. Also,
why track only interest (as opposed
to income)?

96 14. A preneed trust, including trusts established before August
97 28, 2009, shall terminate when the trust principal no longer includes
98 any payments made under any preneed contract, and upon such
99 termination the trustee shall distribute all trust property, including
100 principal and undistributed income, to the seller which established the
101 trust.

436.435. Trustee duties

1. To the extent that any provisions in this chapter
2 which come into effect on August 28, 2009, apply to trusts governed
3 under this chapter which are in existence on August 28, 2009, such
4 trusts shall be in compliance with this chapter no later than July 1,
5 2010.

Comment [O50]: Does this mean that no one has to comply with SB1 until after July 1, 2010? Or what exactly does this mean. Should clarify in rule.

6 2. All property held in a preneed trust, including principal and
7 undistributed income, shall be invested and reinvested by the trustee
8 thereof and shall only be invested and reinvested in investments which
9 have reasonable potential for growth or producing income. Funds in,
10 or belonging to, a preneed trust shall not be invested in any term life
11 insurance product.

Comment [K51]: May want to address in rules regarding transition – what “compliance” means, what board will do before and after 07/1/10, etc.

12 3. A trustee shall invest and manage trust assets as a prudent
13 investor would, by considering the purposes, terms, distribution
14 requirements, and other circumstances of the trust. In satisfying this
15 standard, the trustee shall exercise reasonable care, skill, and caution.
16 A trustee who has special skills or expertise, or is named trustee in
17 reliance upon the trustee's representation that the trustee has special
18 skills or expertise, has a duty to use those special skills or expertise
19 when investing and managing trust assets.

20 4. A trustee shall diversify the investments of the trust unless the
21 trustee reasonably determines that, because of special circumstances,
22 the purpose of the trust is better served without diversification.

Comment [K52]: Trusts which hold insurance should be exempt for diversification, as well as small trusts, but what other circumstances would justify this exception?

23 5. In investing and managing trust assets, a trustee shall
24 consider the following as are relevant to the trust:

25 (1) General economic conditions;

26 (2) The possible effect of inflation or deflation;

27 (3) The expected tax consequences of investment decisions or
28 strategies;

29 (4) The role that each investment or course of action plays
30 within the overall trust portfolio;

31 (5) The expected total return from income and the appreciation
32 of capital;

33 (6) Needs for liquidity, regularity of income, and preservation or
34 appreciation of capital;

35 6. No seller, provider, or preneed agent shall procure or accept
36 a loan against any investment or asset of or belonging to a preneed
37 trust. As of August 29, 2009, no preneed seller, provider, or agent shall
38 use any existing preneed contract as collateral or security pledged for
39 a loan or take preneed funds of any existing preneed contract as a loan
40 or for any purpose other than as authorized by this chapter.

Comment [053]: Can a purchaser who has an insurance policy assigned to a funeral home borrow against the policy?

436.440. Trustee delegation to agent

1. The provisions of this section shall apply to all
2 preneed trusts, including trusts established before August 28, 2009.

3 2. A preneed trustee may delegate to an agent, duties and powers
4 that a prudent trustee of comparable skills would reasonably delegate
5 under the circumstances. The trustee shall exercise reasonable care,
6 skill, and caution in:

7 (1) Selecting an agent;

8 (2) Establishing the scope and terms of the agency, consistent
9 with the purposes and terms of the trust; and

10 (3) Periodically reviewing the agent's actions in order to monitor
11 the agent's performance and compliance with the terms of the agency.

12 3. In performing a delegated function, an agent owes a duty to
13 the trust to exercise reasonable care to comply with the terms of the
14 agency.

15 4. By accepting a delegation of powers or duties from the trustee
16 of a preneed trust, an agent submits to the jurisdiction of the courts of
17 this state.

18 5. Delegation of duties and powers to an agent shall not relieve
19 the trustee of any duty or responsibility imposed on the trustee by
20 sections 436.400 to 436.520 or the trust agreement.

21 6. For trusts in existence as of August 28, 2009, it shall be
22 permissible for those trusts to continue to utilize the services of an
23 independent financial advisor, if said advisor was in place pursuant to
24 section 436.031, RSMo, as of August 28, 2009.

Comment [K54]: Could set out what this means, but wouldn't have to...especially as regards trustee's responsibilities (trustee obligations already addressed elsewhere).

436.445. Trustee investment restrictions

A trustee of any preneed trust, including trusts
established before August 28, 2009, shall not after August 28, 2009, make
any decisions to invest any trust fund with:

(1) The spouse of the trustee;

(2) The descendants, siblings, parents, or spouses of a seller or
an officer, manager, director or employee of a seller, provider, or
preneed agent;

(3) Agents or attorneys of a trustee, seller, or provider; or

(4) A corporation or other person or enterprise in which the
trustee, seller, or provider owns a controlling interest or has an
interest that might affect the trustee's judgment.

Comment [K55]: Could define these
via rule.

Comment [K56]: Frequently, the
investment advisor has some form of
relationship to the seller, even if no
more than an agency relationship.

Comment [K57]: Same

Comment [K58]: May want to
address that where a current investment,
not required to divest unless trustee
deems prudent?

436.450. Insurance funded contracts

1. An insurance-funded preneed contract shall comply with sections 436.400 to 436.520 and the specific requirements of this section.

2. A seller, provider, or any preneed agent shall not receive or collect from the purchaser of an insurance-funded preneed contract, any amount in excess of what is required to pay the premiums on the insurance policy as assessed or required by the insurer as premium payments for the insurance policy except for any amount required or authorized by this chapter or by rule. A seller shall not receive or collect any administrative or other fee from the purchaser for or in connection with an insurance-funded preneed contract, other than those fees or amounts assessed by the insurer. As of August 29, 2009, no preneed seller, provider, or agent shall use any existing preneed contract as collateral or security pledged for a loan or take preneed funds of any existing preneed contract as a loan for any purpose other than as authorized by this chapter.

3. Payments collected by or on behalf of a seller for an insurance-funded preneed contract shall be promptly remitted to the insurer or the insurer's designee as required by the insurer; provided that payments shall not be retained or held by the seller or preneed agent for more than thirty days from the date of receipt.

4. It is unlawful for a seller, provider, or preneed agent to procure or accept a loan against any insurance contract used to fund a preneed contract.

5. Laws regulating insurance shall not apply to preneed contracts, but shall apply to any insurance or single premium annuity sold with a preneed contract; provided, however, the provisions of this act shall not apply to single premium annuities or insurance policies regulated by chapters 374, 375, and 376, RSMo, used to fund preneed funeral agreements, contracts, or programs.

6. This section shall apply to all preneed contracts including those entered into before August 28, 2009.

7. For any insurance-funded preneed contract sold after August 28, 2009, the following shall apply:

(1) The purchaser or beneficiary shall be the owner of the insurance policy purchased to fund a preneed contract; and

Comment {K59}: Address purchaser paying insurer directly?

Comment {K60}: Set out that receipt by agent = receipt by seller?

37 (2) An insurance-funded preneed contract shall be valid and
38 enforceable only if the seller or provider is named as the beneficiary
39 or assignee of the life insurance policy funding the contract.

40 8. If the proceeds of the life insurance policy exceed the actual
41 cost of the goods and services provided pursuant to the nonguaranteed
42 preneed contract, any overage shall be paid to the estate of the
43 beneficiary, or, if the beneficiary received public assistance, to the
44 state of Missouri.

Comment [K61]: Could define in rule

436.455. Joint accounts

1. ~~A~~ joint account-funded preneed contract shall comply
2 with sections 436.400 to 436.520 and the specific requirements of this
3 section.

Comment [K62]: Set out any of the following?:
-no pooling of joint accounts
-may be in CD or other type of deposit instrument
-when agent receives money, seller is deemed to have received

4 2. In lieu of a trust-funded or insurance-funded preneed contract,
5 the seller and the purchaser may agree in writing that all funds paid
6 by the purchaser or beneficiary for the preneed contract shall be
7 deposited with a financial institution chartered and regulated by the
8 federal or state government authorized to do business in Missouri in an
9 account in the joint names and under the joint control of the seller and
10 purchaser, beneficiary or party holding power of attorney over the
11 beneficiary's estate. There shall be a separate joint account established
12 for each preneed contract sold or arranged under this section. Funds
13 shall only be withdrawn or paid from the account upon the signatures
14 of both the seller and the purchaser or under a pay-on-death
15 designation or as required to pay reasonable expenses of administering
16 the account.

17 3. All consideration paid by the purchaser under a joint account-
18 funded contract shall be deposited into a joint account as authorized
19 by this section within ten days of receipt of payment by the seller.

20 4. The financial institution shall hold, invest, and reinvest funds
21 deposited under this section in other accounts offered to depositors by
22 the financial institutions as provided in the written agreement of the
23 purchaser and the seller, provided the financial institution shall not
24 invest or reinvest any funds deposited under this section in term life
25 insurance or any investment that does not reasonably have the
26 potential to gain income or increase in value.

Comment [K63]: Could address in rule, but is probably better left to finance law

27 5. Income generated by preneed funds deposited under this
28 section shall be used to pay the reasonable expenses of administering
29 the account as charged by the financial institution and the balance of
30 the income shall be distributed or reinvested upon fulfillment of the
31 contract, cancellation or transfer pursuant to the provisions of this
32 chapter.

Comment [K64]: This is used in a number of places. Could define in rule, but doing so would likely hem in board unnecessarily in a future unforeseen circumstance. May be better to leave the determination of reasonable as a case-by-case analysis for the board.

33 6. Within fifteen days after a provider and a witness certifies to
34 the financial institution in writing that the provider has furnished the
35 final disposition, funeral, and burial services and facilities, and
36 merchandise as required by the preneed contract, or has provided
37 alternative funeral benefits for the beneficiary under special

38 arrangements made with the purchaser, the financial institution shall
39 distribute the deposited funds to the seller if the certification has been
40 approved by the purchaser. The seller shall pay the provider within
41 ten days of receipt of funds.

42 7. Any seller, provider, or preneed agent shall not procure or
43 accept a loan against any investment, or asset of, or belonging to a joint
44 account. As of August 28, 2009, it shall be prohibited to use any
45 existing preneed contract as collateral or security pledged for a loan,
46 or take preneed funds of any existing preneed contract as a loan or for
47 any purpose other than as authorized by this chapter.

August 11

Public Comments

Bill Stalter August 11 2009 Comments

23 and not in lieu of any authority provided by this chapter, and may be
24 brought concurrently with other actions to enforce this chapter or
25 sections 436.400 to 436.520, RSMo.

333.340. 1. The board shall adopt and enforce rules for the
2 transaction of its business and for standards of service and practice to
3 be followed in the professions of embalming and funeral directing
4 deemed by it necessary for the public good and consistent with the laws
5 of this state. The board may also prescribe a standard of proficiency
6 as to the qualifications and fitness of those engaging in the practice of
7 embalming or funeral directing.

8 2. The board shall set the amount of the fees which this chapter
9 authorizes and requires by rules promulgated under section 536.021,
10 RSMo. The fees shall be set at a level to produce revenue which shall
11 not substantially exceed the cost and expense of administering this
12 chapter.

13 3. The board shall promulgate and enforce rules for the
14 transaction of its business and for standards of service and practice to
15 be followed for the licensing and registration of providers, sellers, and
16 preneed agents deemed necessary for the public good and consistent
17 with the laws of this state.

18 4. Any rule or portion of a rule, as that term is defined in section
19 536.010, RSMo, that is created under the authority delegated in this
20 section shall become effective only if it complies with and is subject to
21 all of the provisions of chapter 536, RSMo, and, if applicable, section
22 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
23 and if any of the powers vested with the general assembly pursuant to
24 chapter 536, RSMo, to review, to delay the effective date, or to
25 disapprove and annul a rule are subsequently held unconstitutional,
26 then the grant of rulemaking authority and any rule proposed or
27 adopted after August 28, 2009, shall be invalid and void.

436.400. The provisions of sections 436.400 to 436.520 shall be
2 referenced as the "Missouri Preneed Funeral Contract Act" and shall
3 apply only to preneed contracts entered into, and accounts created on
4 or after, August 28, 2009, unless otherwise specified.

436.405. 1. As used in sections 436.400 to 436.520, unless the
2 context otherwise requires, the following terms shall mean:

3 (1) "Beneficiary", the individual who is to be the subject of the

4 disposition or who will receive funeral services, facilities, or
5 merchandise described in a preneed contract;

6 (2) "Guaranteed contract", a preneed contract in which the seller
7 promises, assures, or guarantees to the purchaser that all or any
8 portion of the costs for the disposition, services, facilities, or
9 merchandise identified in a preneed contract will be no greater than
10 the amount designated in the contract upon the preneed beneficiary's
11 death or that such costs will be otherwise limited or restricted;

12 (3) "Insurance-funded preneed contract", a preneed contract
13 which is designated to be funded by payments or proceeds from an
14 insurance policy or single premium annuity contract;

15 (4) "Joint account-funded preneed contract", a preneed contract
16 which designates that payments for the preneed contract made by or
17 on behalf of the purchaser will be deposited and maintained in a joint
18 account in the names of the purchaser and seller, as provided in this
19 chapter;

20 (5) "Market value", a fair market value:

21 (a) As to cash, the amount thereof;

22 (b) As to a security as of any date, the price for the security as
23 of that date obtained from a generally recognized source, or to the
24 extent no generally recognized source exists, the price to sell the
25 security in an orderly transaction between unrelated market
26 participants at the measurement date; and

27 (c) As to any other asset, the price to sell the asset in an orderly
28 transaction between unrelated market participants at the measurement
29 date consistent with statements of financial accounting standards;

30 (6) "Nonguaranteed contract", a preneed contract in which the
31 seller does not promise, assure, or guarantee that all or any portion of
32 the costs for the disposition, facilities, service, or merchandise
33 identified in a preneed contract will be limited to the amount
34 designated in the contract upon the preneed beneficiary's death or that
35 such costs will be otherwise limited or restricted;

36 (7) "Preneed contract", any contract or other arrangement which
37 provides for the final disposition in Missouri of a dead human body,
38 funeral or burial services or facilities, or funeral merchandise, where
39 such disposition, services, facilities, or merchandise are not
40 immediately required. Such contracts include, but are not limited to,

41 agreements providing for a membership fee or any other fee for the
42 purpose of furnishing final disposition, funeral or burial services or
43 facilities, or funeral merchandise at a discount or at a future date;

44 (8) "Preneed trust", a trust to receive deposits of, administer, and
45 disburse payments received under preneed contracts, together with
46 income thereon;

47 (9) "Purchaser", the person who is obligated to pay under a
48 preneed contract;

49 (10) "Trustee", the trustee of a preneed trust, including successor
50 trustees;

51 (11) "Trust-funded preneed contract", a preneed contract which
52 provides that payments for the preneed contract shall be deposited and
53 maintained in trust.

54 2. All terms defined in chapter 333, RSMo, shall be deemed to
55 have the same meaning when used in sections 436.400 to 436.520.

436.410. The provisions of sections 436.400 to 436.520 shall not
2 apply to any contract or other arrangement sold by a cemetery
3 operator for which payments received by or on behalf of the purchaser
4 are required to be placed in an endowed care fund or for which a
5 deposit into a segregated account is required under chapter 214, RSMo;
6 provided that a cemetery operator shall comply with sections 436.400
7 to 436.520 if the contract or arrangement sold by the operator includes
8 services that may only be provided by a licensed funeral director or
9 embalmer.

436.412. Each preneed contract made before August 28, 2009, and
2 all payments and disbursements under such contract shall continue to
3 be governed by this chapter as the chapter existed at the time the
4 contract was made. Any licensee or registrant of the board may be
5 disciplined for violation of any provision of sections 436.005 to 436.071
6 within the applicable statute of limitations. In addition, the provisions
7 of section 436.031, RSMo, as it existed on August 27, 2009, shall continue
8 to govern disbursements to the seller from the trust and payment of
9 trust expenses. Joint accounts in existence as of August 27, 2009, shall
10 continue to be governed by the provisions of section 436.053, as that
11 section existed on August 27, 2009.

436.415. 1. Except as otherwise provided in sections 436.400 to
2 436.520, the provider designated in a preneed contract shall be

3 obligated to provide final disposition, funeral or burial services and
4 facilities, and funeral merchandise as described in the preneed
5 contract.

6 2. The seller designated in a preneed contract shall be obligated
7 to collect and properly deposit and disburse all payments made by, or
8 on behalf of, a purchaser of a preneed contract and ensure that is
9 statutorily and contractual duties are met, in compliance with sections
10 436.400 to 436.520, RSMo.

436.420. 1. No person shall be designated as a provider in a
2 preneed contract unless the provider has a written contractual
3 agreement with the seller. Any seller who designates a person as a
4 provider in a preneed contract without a contractual relationship with
5 such person is in violation of the provisions of sections 436.400 to
6 436.520. No contract is required if the seller and provider are the same
7 legal entity.

8 2. The written agreement required by this section shall include:

9 (1) Written consent from the provider authorizing the seller to
10 designate or obligate the provider under a preneed contract;

11 (2) Procedures for tracking preneed contract funds or payments
12 received by the provider and for remitting such funds or payments to
13 the seller, including, the time period authorized by the seller for the
14 remittance of funds and payments; and

15 (3) The signatures of the seller and the provider or their
16 authorized representatives and the date such signature was obtained.

17 3. A provider shall notify the board within fifteen days of
18 authorizing or otherwise agreeing to allow a seller to designate himself
19 or herself as the provider under any preneed contract.

20 4. Upon request of the board, a seller, provider, or preneed agent
21 shall provide a copy of any preneed contract or any contract or
22 agreement with a seller or provider to the board.

436.425. 1. All preneed contracts shall be sequentially numbered
2 and in writing and in a font type and size that are easily read, and shall
3 clearly and conspicuously:

4 (1) Include the name, address and phone number of the
5 purchaser, beneficiary, provider and seller;

6 (2) Identify the name, address, phone and license number of the
7 provider and the seller;

8 (3) Set out in detail the disposition, funeral and burial services
9 and facilities, and merchandise requested;

10 (4) Identify whether the contract is trust funded, insurance
11 funded, or joint account funded;

12 (5) Include notice that the cancellation of the contract shall not
13 cancel any life insurance funding the contract, and that insurance
14 cancellation is required to be made in writing to the insurer;

15 (6) Include notice that the purchaser will only receive the cash
16 surrender value of any insurance policy funding the contract if
17 cancelled after a designated time, which may be less than the amount
18 paid into the policy;

19 (7) Include notice that the board provides by rule that the
20 purchaser has the right to transfer the provider designation to another
21 provider;

22 (8) Prominently identify whether the contract is revocable or
23 irrevocable;

24 (9) Set forth the terms for cancellation by the purchaser or by
25 the seller;

26 (10) Identify any preneed trust or joint account into which
27 contract payments shall be deposited, including the name and address
28 of the corresponding trustee or financial institution;

29 (11) Include the name, address and phone number of any
30 insurance company issuing an insurance policy used to fund the
31 preneed contract;

32 (12) Include the name and signature of the purchaser, the
33 provider or its authorized representative, the preneed agent
34 responsible for the sale of the contract, and the seller or its authorized
35 representative;

36 (13) Prominently identify whether the contract is a guaranteed
37 or nonguaranteed contract;

38 (14) Include any applicable consumer disclosures required by the
39 board by rule; and

40 (15) Include a disclosure on all guaranteed installment payment
41 contracts informing the purchaser what will take place in the event the
42 beneficiary dies before all installments have been paid, including an
43 explanation of what will be owed by the purchaser for the funeral
44 services in such an event.

45 (16) Comply with the provisions of sections 436.400 to 436.520 or
46 any rule promulgated thereunder.

47 2. A preneed contract shall be voidable and unenforceable at the
48 option of the purchaser, or the purchaser's legal representative, if it is
49 determined in a court of competent jurisdiction that the contract is not
50 in compliance with this section or not issued by a seller licensed under
51 chapter 333, RSMo, or if the provider has not consented to serve as
52 provider at the time the contract was executed. Upon exercising the
53 option by written notice to the seller and provider, all payments made
54 under such contract shall be recoverable by the purchaser, or the
55 purchaser's legal representative, from the contract seller, trustee, or
56 other payee thereof.

57 3. A beneficiary who seeks to become eligible to receive public
58 assistance under chapter 208, RSMo, or any other applicable state or
59 federal law may irrevocably waive their rights to receive any refund or
60 payment of any monies from the funds or insurance used to fund their
61 preneed contract. Such irrevocable waiver may be executed at any
62 time and shall be in writing, signed and dated by the beneficiary and
63 shall be delivered to the seller and any applicable trustee, financial
64 institution or insurance company;

65 4. All purchasers shall have the right as provided in this chapter
66 to cancel or rescind a revocable preneed contract and transfer any
67 preneed contract with or without cause.

68 5. A preneed contract, shall not be changed from a trust-funded,
69 insurance-funded, or joint account-funded preneed contract without the
70 written consent of the purchaser.

 436.430. 1. A trust-funded preneed contract shall comply with
2 sections 436.400 to 436.520 and the specific requirements of this section.

3 2. A seller must deposit all payments received on a preneed
4 contract into the designated preneed trust within sixty days of receipt
5 of the funds by the seller, the preneed sales agent or designee. A seller
6 may not require the consumer to pay any fees or other charges except
7 as authorized by the provisions of chapter 333, RSMo, and this chapter
8 or other state or federal law.

9 3. A seller may request the trustee to distribute to the seller an
10 amount up to the first five percent of the total amount of any preneed
11 contract as an origination fee. The seller may make this request at any

12 time after five percent of the total amount of the preneed contract has
13 been deposited into the trust. The trustee shall make this distribution
14 to the seller within 15 days of the receipt of the request.

15 4. In addition to the origination fee, the trustee may distribute
16 to the seller, an amount up to ten percent of the face value of the
17 contract on a preneed contract at any time after the consumer payment
18 has been deposited into the trust. The seller may make written request
19 for this distribution and the trustee shall make this distribution to the
20 seller within fifteen days of the receipt of the request or as may be
21 provided in any written agreement between the seller and the trustee.

22 5. The trustee of a preneed trust shall be a state- or federally-
23 chartered financial institution authorized to exercise trust powers in
24 Missouri. The trustee shall accept all deposits made to it for a preneed
25 contract and shall hold, administer, and distribute such deposits, in
26 trust, as trust principal, under sections 436.400 to 436.520.

27 6. The financial institution referenced herein may neither
28 control, be controlled by, nor be under common control with the seller
29 or preneed agent. The terms "control", "controlled by" and "under
30 common control with" means, the direct or indirect possession of the
31 power to direct or cause the direction of the management and policies
32 of a person, whether through the ownership of voting securities, by
33 contract other than a commercial contract for goods or nonmanagement
34 services, or otherwise, unless the power is the result of an official
35 position with or corporate office held by the person. Control shall be
36 presumed to exist if any person, directly or indirectly, owns, controls,
37 holds with the power to vote, or holds proxies representing ten percent
38 or more of the voting securities. This presumption may be rebutted by
39 a showing to the board that control does not in fact exist.

40 7. Payments regarding two or more preneed contracts may be
41 deposited into and commingled in the same preneed trust, so long as
42 the trustee maintains adequate records that individually and
43 separately identify the payments, earnings, and distributions for each
44 preneed contract.

45 8. Within a reasonable time after accepting a trusteeship or
46 receiving trust assets, a trustee shall review the trust assets and make
47 and implement decisions concerning the retention and disposition of
48 assets in order to bring the trust portfolio into compliance with the

49 purposes, terms, distribution requirements, other circumstances of the
50 trust, and all other requirements of sections 436.400 to 436.520.

51 9. All expenses of establishing and administering a preneed trust,
52 including trustee's fees, legal and accounting fees, investment expenses,
53 and taxes may be paid from income generated from the investment of
54 the trust assets. Principal of the trust shall not be used to pay the costs
55 of administration. If the income of the trust is insufficient to pay the
56 costs of administration, those costs shall be paid as per the written
57 agreements between the seller, provider and the trustee.

58 10. The seller and provider of a trust funded preneed contract
59 shall be entitled to all income, including, but not limited to, interest,
60 dividends, capital gains, and losses generated by the investment of
61 preneed trust property regarding such contract as stipulated in the
62 contract between the seller and provider. Income of the trust,
63 excluding expenses allowed under subsection 10 of this section, shall
64 accrue through the life of the trust, except in instances when a contract
65 is cancelled. The trustee of the trust may distribute market value of all
66 income, net of losses, to the seller upon, but not before, the final
67 disposition of the beneficiary and provision of the funeral and burial
68 services and facilities, and merchandise to, or for, the benefit of the
69 beneficiary. This subsection shall apply to trusts established on or
70 after August 28, 2009.

71 11. Providers shall request payment by submitting a certificate
72 of performance to the seller certifying that the provider has rendered
73 services under the contract or as requested. The certificate shall be
74 signed by both the provider and the person authorized to make
75 arrangements on behalf of the beneficiary. If there is no written
76 contract between the seller and provider, the provider shall be entitled
77 to the market value of all trusts assets allocable to the preneed
78 contract. Sellers shall remit payment to the provider within sixty days
79 of receiving the certificate of performance.

80 12. If a seller fails to make timely payment of an amount due a
81 provider under sections 436.400 to 436.520, the provider shall have the
82 right, in addition to other rights and remedies against such seller, to
83 make demand upon the trustee of the preneed trust for the contract to
84 distribute to the provider from the trust all amounts to which the seller
85 would be entitled to receive for the preneed contract.

86 13. The trustee of a preneed trust, including trusts established
87 before August 28, 2009, shall maintain adequate books and records of
88 all transactions administered over the life of the trust and pertaining
89 to the trust generally. The trustee shall assist the seller who
90 established the trust or its successor in interest in the preparation of
91 the annual report described in section 436.460. The seller shall furnish
92 to each contract purchaser, within thirty days after receipt of the
93 purchaser's written request, a written statement of all deposits made
94 to such trust regarding such purchaser's contract including the
95 principal and interest paid to date.

96 14. A preneed trust, including trusts established before August
97 28, 2009, shall terminate when the trust principal no longer includes
98 any payments made under any preneed contract, and upon such
99 termination the trustee shall distribute all trust property, including
100 principal and undistributed income, to the seller which established the
101 trust.

 436.435. 1. To the extent that any provisions in this chapter
2 which come into effect on August 28, 2009, apply to trusts governed
3 under this chapter which are in existence on August 28, 2009, such
4 trusts shall be in compliance with this chapter no later than July 1,
5 2010.

6 2. All property held in a preneed trust, including principal and
7 undistributed income, shall be invested and reinvested by the trustee
8 thereof and shall only be invested and reinvested in investments which
9 have reasonable potential for growth or producing income. Funds in,
10 or belonging to, a preneed trust shall not be invested in any term life
11 insurance product.

12 3. A trustee shall invest and manage trust assets as a prudent
13 investor would, by considering the purposes, terms, distribution
14 requirements, and other circumstances of the trust. In satisfying this
15 standard, the trustee shall exercise reasonable care, skill, and caution.
16 A trustee who has special skills or expertise, or is named trustee in
17 reliance upon the trustee's representation that the trustee has special
18 skills or expertise, has a duty to use those special skills or expertise
19 when investing and managing trust assets.

20 4. A trustee shall diversify the investments of the trust unless the
21 trustee reasonably determines that, because of special circumstances,

22 the purpose of the trust is better served without diversification.

23 5. In investing and managing trust assets, a trustee shall
24 consider the following as are relevant to the trust:

25 (1) General economic conditions;

26 (2) The possible effect of inflation or deflation;

27 (3) The expected tax consequences of investment decisions or
28 strategies;

29 (4) The role that each investment or course of action plays
30 within the overall trust portfolio;

31 (5) The expected total return from income and the appreciation
32 of capital;

33 (6) Needs for liquidity, regularity of income, and preservation or
34 appreciation of capital;

35 6. No seller, provider, or preneed agent shall procure or accept
36 a loan against any investment or asset of or belonging to a preneed
37 trust. As of August 29, 2009, no preneed seller, provider, or agent shall
38 use any existing preneed contract as collateral or security pledged for
39 a loan or take preneed funds of any existing preneed contract as a loan
40 or for any purpose other than as authorized by this chapter.

436.440. 1. The provisions of this section shall apply to all
2 preneed trusts, including trusts established before August 28, 2009.

3 2. A preneed trustee may delegate to an agent, duties and powers
4 that a prudent trustee of comparable skills would reasonably delegate
5 under the circumstances. The trustee shall exercise reasonable care,
6 skill, and caution in:

7 (1) Selecting an agent;

8 (2) Establishing the scope and terms of the agency, consistent
9 with the purposes and terms of the trust; and

10 (3) Periodically reviewing the agent's actions in order to monitor
11 the agent's performance and compliance with the terms of the agency.

12 3. In performing a delegated function, an agent owes a duty to
13 the trust to exercise reasonable care to comply with the terms of the
14 agency.

15 4. By accepting a delegation of powers or duties from the trustee
16 of a preneed trust, an agent submits to the jurisdiction of the courts of
17 this state.

18 5. Delegation of duties and powers to an agent shall not relieve

19 the trustee of any duty or responsibility imposed on the trustee by
20 sections 436.400 to 436.520 or the trust agreement.

21 6. For trusts in existence as of August 28, 2009, it shall be
22 permissible for those trusts to continue to utilize the services of an
23 independent financial advisor, if said advisor was in place pursuant to
24 section 436.031, RSMo, as of August 28, 2009.

436.445. A trustee of any preneed trust, including trusts
2 established before August 28, 2009, shall not after August 28, 2009, make
3 any decisions to invest any trust fund with:

4 (1) The spouse of the trustee;

5 (2) The descendants, siblings, parents, or spouses of a seller or
6 an officer, manager, director or employee of a seller, provider, or
7 preneed agent;

8 (3) Agents or attorneys of a trustee, seller, or provider; or

9 (4) A corporation or other person or enterprise in which the
10 trustee, seller, or provider owns a controlling interest or has an
11 interest that might affect the trustee's judgment.

436.450. 1. An insurance-funded preneed contract shall comply
2 with sections 436.400 to 436.520 and the specific requirements of this
3 section.

4 2. A seller, provider, or any preneed agent shall not receive or
5 collect from the purchaser of an insurance-funded preneed contract,
6 any amount in excess of what is required to pay the premiums on the
7 insurance policy as assessed or required by the insurer as premium
8 payments for the insurance policy except for any amount required or
9 authorized by this chapter or by rule. A seller shall not receive or
10 collect any administrative or other fee from the purchaser for or in
11 connection with an insurance-funded preneed contract, other than
12 those fees or amounts assessed by the insurer. As of August 29, 2009,
13 no preneed seller, provider, or agent shall use any existing preneed
14 contract as collateral or security pledged for a loan or take preneed
15 funds of any existing preneed contract as a loan for any purpose other
16 than as authorized by this chapter.

17 3. Payments collected by or on behalf of a seller for an
18 insurance-funded preneed contract shall be promptly remitted to the
19 insurer or the insurer's designee as required by the insurer; provided
20 that payments shall not be retained or held by the seller or preneed

August 11

Public Comments

Don Otto August 11 2009 Comments

Rough Draft of Proposed Regulation language

RE: 333.011

"In the business of funeral directing" shall include receiving directly or indirectly any compensation, remuneration or pecuniary benefit in exchange for performing any activity set out 333.001 (7) including, but not limited to:

1. Performing said activities in exchange for the purchase of any products or services;
2. Performing said activities in exchange for donations to any church or charitable organizations.
3. Performing said activities in exchange for other goods or services

However in no event shall a person licensed under Chapter 333 be deemed not to be in the business of funeral directing by not charging for any provided goods or services.

August 11

Public Comments

Mark Warren August 11 2009 comments

<u>Section</u>	<u>Brief Description of Issue</u>	<u>Proposed Change</u>
Section 436.405		
436.405(2)	Freezes prices at the time the contract was entered into.	Expand on definition to allow funeral home to collect up to the cost of their at-need bill.
436.405(6)	Freezes prices at the time the contract was entered into.	Expand on definition to allow funeral home to collect up to the cost of their at-need bill.
Section 436.415		
436.415(2)	Collection and disbursement of money shall be made directly to insurance company to prevent misappropriation of funds.	All insurance premiums shall be sent directly from policyowner to insurance company.
436.405(3)	Defines insurance-funded as a single or modal pay insurance policy, but only a single pay annuity. Does this mean that modal pay annuities are still allowed but do not fall under this Act? What about reporting?	
436.420	Remittance of funds to insurance companies and payment of death benefits from insurance companies.	All insurance premiums shall be sent directly from policyowner to insurance company. Insurance companies will only pay the assigned funeral home or the named beneficiary as directed in policy language.
Section 436.425		
436.425	Sequential numbering of contracts creates messes.	Allow each preneed seller to create their own process. Preneed contracts should have a blank line inserted at the top.
436.425(3)	Irrevocability of funding to qualify for governmental benefits (i.e. Medicaid).	Need to allow the policyowner to meet the qualifications of DHS by making the life insurance policy irrevocably, not the preneed contract. Current language does not do this.

Section 436.450

436.450(1)	Insurance funded preneed contracts	Insurance funded preneed contract need not comply with those sections that specifically deal with trust funded and joint account funded preneed funeral contracts.
436.450(3)	Submission of premium payments to insurance company no seller	All insurance premiums shall be sent directly from policyowner to insurance company.
436.450(8)(2)	Seller should not be named as beneficiary or assignee.	Need to protect freedom of choice of consumer and only allow funeral homes to be named assignees. Neither providers or sellers shall be named beneficiaries as it allows them to receive death benefits whether they perform services or not.
436.450(9)	State of Missouri receiving excess proceeds as stated in statute violates policy language.	Require person going on Medicaid to name state of Missouri as beneficiary. Anything else would violate insurance policy language.

August 11

Public Comments

Roger Richie August 11 2009 comments

From: John Ziegenhein

Sent: Saturday, August 08, 2009 11:33 AM

To: Schnieders, Pam

Subject: Re: State Board of Embalmers and Funeral Directors Open Meeting Notice - August 11, 2009

Dear Missouri State Board,

I would like you to issue a suggested list of statements that should be included in the trust funded pre need contract documents that we funeral homes are expected to provide to purchasers when a pre need contract will be funded by at TRUST.

Theoretically, after you have interpreted the new pre need law, you would have an understanding (or expectations) of the minimum "bullet points" that are expected to be written into the funeral home contracts funded through a trust. Your inspector will be inspecting our contracts in the future. What do you expect to see on those contracts?? I would appreciate this "second opinion" of the law to confirm my interpretation of the law

THANK YOU,

Roger Richie

John L. Ziegenhein & Sons in St. Louis, Missouri 63116

314 352 2600